

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

**AND**

**SH. KUL BHARAT, JUDICIAL MEMBER**

**ITA No.3454/Del/2019**

**Assessment Year: 2007-08**

<b>Arun Kumar Aggarwal B-1/74, Safdarjung Enclave, New Delhi-110029 PAN No.AAEPA1259K (APPELLANT)</b>	<b>Vs</b>	<b>ACIT Circle – 24 (1) New Delhi (RESPONDENT)</b>
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<b>Appellant</b>	<b>Sh. Neeraj Mangla, CA</b>
<b>Respondent</b>	<b>Sh. Kanv Bali, Sr. DR</b>

<b>Date of Hearing</b>	<b>26.10.2023</b>
<b>Date of Pronouncement</b>	<b>26.10.2023</b>

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the assessee is preferred against the order of the CIT(A)-31, New Delhi dated 18.02.2019 pertaining to A.Y. 2007-08.

2. The grievance of the assessee read as under :-

*“1. That the assessment order passed by the Ld. AO under Section 263/ 143(3) of the Act is against the principle of natural justice and law because of being passed without allowing any opportunity of being heard and without issue of any show cause notice prior proceeding to make additions to the income of the assessee.*

*2. That the appellate order passed by the Ld. CIT(A) holding that sufficient opportunity was allowed by the Ld. AO is also not tenable being against the facts of the case that the appellant had requested to keep the assessment proceedings in abeyance till the disposal of the appeal of the assessee against the order under Section 263 by Hon'ble ITAT and the Ld. AO prior completion of assessment proceedings never intimated of rejection of the application of the assessee.*

*3. That the Ld. AO grossly erred in law in invoking provisions of Sec. 50C(1) of the Act and taking stamp duty value of property as its sale consideration without making reference to DVO under Section 50C(2) of the Act on the pretext that the said request has not been made by the assessee during the course of original assessment.*

*4. That the Ld. CIT(A) grossly erred in law in holding that the precondition for invoking provisions of Sec. 50C(2) and making a reference to DVO is a specific request made by the assessee in this regard despite the fact that such a reference is to be made when an assessee claims that the FMV of the property sold is less than the*

*Stamp Duty Value and such a claim was duly made by the assessee in his submissions made before the Ld. CIT Central-2 during the course of proceedings under Section 263 of the Act.*

*5. That the Ld. CIT(A) grossly erred in law in drawing adverse inference in the case of the assessee due to non-objecting the stamp duty value before any authorities despite the fact that the assessee was not bothered with the stamp duty being paid by the buyer of the property and a reference could be made under Section 50C(2) of the Act only in the case where no such objection is taken before any authority.*

*6. That the Ld. AO grossly erred in facts of the case in disallowing set-off of brought forward loss on the pretext that the appellant had not declared loss in Form No. 2D (Saral) for A.Y. 2006-07 despite the fact that the stated loss was duly appearing in the return of income filed by the assessee and a notice under Section 154/155 of the Act was issued by AO on 27/05/2011 and 05/08/2011 for the stated disallowance wherein the reason of proposed disallowance was only that the loss brought forward from A.Y. 2006-07 is from an agricultural land.*

*7. That the Ld. AO grossly erred in law and to the facts of the case in holding the property sold during A.Y. 2006-07 to not being a capital asset under Section 2(14) of the Act without bringing any evidence on record in this regard.”*

3. Briefly stated the facts of the case are that the assessee filed his return of income on 04.01.2008 declaring income of Rs.29,81,168/- under the head short term capital gain and long term capital gain.

4. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee. The assessment was completed u/s. 143 (3) of the Act vide order dated 30.12.2009. The PCIT assumed jurisdiction u/s. 263 of the Act and set aside the assessment being erroneous and pre judicial to the interest of the revenue. Pursuant to the order of the CIT u/s. 263 of the Act the assessment proceedings were initiated.

5. The long term capital gain returned by the assessee was recomputed by the AO who adopted stamp duty value as the full value of the consideration.

6. Proceeding further the AO noticed that the assessee has claimed set off of long term capital loss of Rs.36,75,100/- claimed to have been brought forward from A.Y. 2006-07. On verification of the return the AO found that assessee has not shown any brought forward loss in his return of income and accordingly denied the set off of loss of Rs.36,75,100/-.

7. Aggrieved by the assessment order the assessee preferred an appeal before the CIT(A) but without any success.

8. Before us the Counsel strongly contended that the prayer of the assessee to refer the matter of valuation of property to the DVO was denied by the CIT(A). The Counsel once again prayed for the reference to the DVO to determine the fair market value of the impugned property as the sale made by the assessee was a distress sale.

9. In so far as the set off of brought forward loss is concerned the Counsel pointed out that alongwith the return of income the assessee has filed complete detail of brought forward losses to the set off which has been completely ignored by the AO.

10. The DR strongly supported the findings of the CIT(A) and read the operative part of the assessment order.

11. We have carefully considered the orders of the authorities below. It is true that no reference was made to the DVO to determine the FMV of the impugned property. Under the relevant provision of the Act it has been mentioned that if the assessee is questioning the stamp duty value then the matter should be referred to the DVO for the valuation of the FMV of the property.

Therefore, in the interest of justice and fair play we restore this issue to the files of the AO. The AO is directed to refer the matter of valuation of the impugned property to the DVO and decide the issue afresh after affording a reasonable and adequate opportunity of being heard to the assessee.

12. This issue is allowed for statistical purpose.

13. A perusal of the computation of income which is placed at page 13 of the paper book show that the assessee has computed the long term capital loss at Rs.36,75,100/- and have appended the computation of income with the return of income. We further find that the assessment order for A.Y. 2006-07 as rectified by the AO u/s. 154 of the Act clearly show that the AO has accepted the loss at Rs.36,75,100/-.

14. It appears that these facts have been ignored by the AO, therefore, the AO is directed to examine these facts which are already on record and allow the set off of long term capital loss of Rs.36,75,100/-.

15. With these appeal of the assessee is allowed for statistical purpose.

16. Decision announced in the open court on 26.10.2023.

Sd /-  
**[KUL BHARAT]**  
**JUDICIAL MEMBER**

Dated: October, 2023.

Neha, Sr PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd /-  
**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar,  
ITAT, New Delhi