

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

[Before Shri Sonjoy Sarma, Judicial Member &
Shri Girish Agrawal, Accountant Member]

I.T.A. No. 623/Kol/2023
Assessment Year : 2014-15

Subhra Kanti Dutta	vs	ITO, Ward-41(1), Nadia
PAN: ADEPD 5268 J		
Appellant		Respondent

Date of Hearing	02.01.2024
Date of Pronouncement	31.01.2024
For the Assessee	Shri Anil Kochar, Advocate & Shri S.L. Kochar, Advocate
For the Revenue	Shri Anup Biswas, Addl. CIT

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2014-15 is directed against the order dated 29.12.2022 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

"1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons invalid and bad in law to the extent to which they are prejudicial to the interests of the appellant.

2. For that the ld. CIT(A) ought to have accepted the contention of the appellant that the land sold by the appellant was an agricultural land and that gain that arose to the appellant by its sale was not assessable to tax as long term capital gain.

3. For that ld. CIT(A) ought to have accepted the contention of the appellant that the sale proceeds arising from the transfer of the lands were exempt from tax as the same related to agricultural plot of land.

4. For that further grounds of appeal may kindly be allowed to be taken at the time of hearing of the appeal.”

2. At the outset, we find that there is a delay of 115 days in filing of the appeal by the assessee. We after perusing the petition for condonation are convinced that the assessee was prevented by sufficient cause from filing the appeal in time. Hence delay is condoned and appeal is admitted.

3. Brief facts of the case are that the assessee filed its return of income by showing income of Rs. 9,11,400/-. The case of the assessee was selected for scrutiny followed by notices issued u/s 143(2) and 142(1) of the Act. In response to the notices assessee submitted explanations and necessary details as called for. The ld. AO while framing the assessment notice that assessee sold a plot of land to various parties for a consideration of Rs. 16,00,000/- (in total) of which assessee shows as a capital receipt in its balance sheet without calculating any capital gains on the property sold. Since assessee has claimed that the property which had sold was an agricultural land and on which capital gain does not arise on sale proceeds. However, the ld. AO did not agree to the contention made by the assessee and arrived at a conclusion that the value of property as adopted by Registrar for the purpose of registration of property for the purpose of calculating capital gains of Rs. 80,80,053/- in the hands of assessee without any reference made to the DVO.

4. Dissatisfied with the above order, assessee went into appeal where the appeal of the assessee was partly allowed.

5. Aggrieved by the above order assessee is in appeal before this Tribunal. The ld. AR of the assessee stated that the alleged property sold by assessee was an agricultural land and on which capital gain does not arise. Therefore, the assessee did not assessable to tax under the head of long term capital gain on the alleged property as sold. The ld. AR alternatively submitted before the bench even otherwise the calculation made by the ld. AO is not correct. Since while calculating capital gain in the case of assessee, the ld. AO never referred the matter to DVO for a valuation of the property which is necessary while arriving at the correct value of the property. Therefore, the instant issue may be remand back to the file of AO for adjudication with the direction to calculate the correct valuation of property if any capital gain arise in the case of assessee.

6. On the other hand, ld. DR objected to the prayers made by the AR of the assessee and supported the addition made by the AO while framing the assessment order.

7. We after hearing the rival submission of the parties find that while making addition under the head of capital gain in the case of assessee, the ld. AO never looked into the fact and even not make any endeavour to refer the matter to DVO to arrive at the correct value of the property for the purpose of calculation of capital gain in the hands of assessee. In terms of the above, we remand the instant issue to the file of AO with a direction to

obtain necessary report from DVO regarding the property in question and calculate the tax liability in the case of assessee in accordance with law. The assessee is also directed to appear before the ld. AO and furnish such necessary documents in order to prove its case if any. In terms of the above, the appeal of the assessee is allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31.01.2024.

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 31.01.2024

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Subhra Kanti Dutta, Cinema House Lane, Krishnagar, P.S. Kotwali, Nadia-741101.
2. Respondent – ITO, Ward-41(1), Nadia.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata