

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and
Shri Anil Kumar Dugar, Judicial Member

ITA No. 1012/Coch/2022
(Assessment Year: 2015-16)

Usha Varma SKV College Road Kanattukkara Thrissur 680011 [PAN: ACUPV6425A]	vs.	Asst. CIT, Non Corporate Circle 1(1), Kochi
(Appellant)		(Respondent)

Appellant by:	----- None -----
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	15. 04.2024
Date of Pronouncement:	15.04.2024

ORDER

Per: Sanjay Arora, AM

This is an Appeal by the Assessee directed against the dismissal of her appeal contesting her assessment under section 143(3) of the Income Tax Act, 1961 (the Act) dated 19.12.2017 for Assessment Year (AY) 2015-16 by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)] vide his order dated 28.10.2022.

2. None appeared for and on behalf of the assessee when the appeal was called for hearing. This, despite due communication of the notices of hearing through the assessee's registered email ID (i.e., as furnished for the purpose in Form 36, the memo of appeal before the Tribunal) for today instant, on 18.03.2024 and 03.04.2024, as had been the case on the previous occasions when the case came up for hearing, viz. 14.02.2024, 07.03.2024 and 11/10/2023, as well. In fact, the Tribunal was constrained to adopt this mode in view of the notices of hearing at the assessee's stated address coming back unserved with the postal remarks "Addressee

left India”, with, further, the assessee not furnishing any alternate address and no POA/Vakalat on record. The hearing of the appeal was under the circumstances proceeded with *ex parte* the assessee-appellant.

3. At the outset, it was observed by the Bench that the order appealed against is not that by the first appellate authority, but the assessment order dated 19.12.2017. This stands further confirmed on a perusal of the Grounds of Appeal (GoA) forming part of Form 36, whereby the assessee disputes the fair market value (FMV) of the capital asset sold as on 01.04.1981, i.e., the issue on merits, being the subject matter of assessment. Before the first appellate authority, however, though the assessee presumably raised the issues being agitated before us – inasmuch as Form 35 (memo of appeal before the first appellate authority) is not accompanied by both, the Statement of Facts (SoF) and GoA, made a prayer for closure of the appeal in view of the rectification order passed in her favour. Copy of the same (dated 14.09.2021) is on record as an accompaniment to the order by the first appellate authority. Per the same, the assessee, on moving the Assessing Officer (AO) in its respect, stands allowed credit for TDS for an additional sum of Rs.1,13,51,554. The Id. CIT(A) accepting the assessee’s request, allowed the said withdrawal, dismissing her appeal for statistical purposes. The relevant part of his order reads as under:

2. In response to the notice u/s 250 of the Income Tax Act, 1961, written submission in support of the grounds of appeal received through ITBA and of the same reproduced as under: -

“Since the rectification order was passed in my favour already, please consider this appeal closed. Relevant documents and request letter attached herewith.”

3. Considering the request and written submission, the appeal is allowed to be withdrawn and treated as dismissed for statistical purpose. Hence, the appeal is **dismissed**.

4. We have heard the party before us, and perused the material on record.

4.1 We are completely at loss to understand the instant appeal. To begin with, it continues to be defective inasmuch as Form 35, absence of which was communicated by the Registry vide defect memo dated 30.12.2022, duly completed, i.e., including

SoF and GoA, has yet not been filed. That apart, an appeal before the Tribunal *qua* a s. 143(3) assessment can only be by way of a second appeal, arising out of the order by the CIT(A), the first appellate authority under the Act. The same is therefore not maintainable. Further, the first appellate authority, accepting the assessee's prayer, permitted withdrawal of the appeal. He did not enter the merits of the dispute, which concerns the fair market value (FMV) of the subject land sold by the assessee during the relevant year and, thus, the quantum of capital gain liable to be assessed, at all. The subject matter of his order, as afore-discussed, is the withdrawal of the assessee's appeal before him. Here, again, considering that it follows the assessee's prayer for the same, how we wonder could it result in the assessee being aggrieved so as to prefer a second appeal before the Tribunal. The order on merits by the Tribunal, it may be appreciated, could only be *qua* an adjudication thereon by the first appellate authority, i.e., on the non-acceptance of the assessee's said request.

4.2 In view of the foregoing, we find the instant appeal as neither maintainable nor liable to be adjudicated on merits. We decide accordingly.

5. In the result, the assessee's appeal is dismissed.

Order pronounced in the open court on the conclusion of the hearing.

Sd/-
(Anil Kumar Dugar)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: April 15, 2024

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin