

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 797/DEL/2024
Assessment Year: 2012-13

Tek Chand, Village Kalana Khas, P.O. Gohana, Panipat.	<u>Vs</u>	Income-tax Officer, Ward-e, Panipat.
PAN- AANPC 3028 R		
APPELLANT		RESPONDENT
Assessee represented by	Ms. Rano Jain, Adv.	
Department represented by	Shri Om Parkash, Sr. DR	
Date of hearing	21.05.2024	
Date of pronouncement	21.05.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned CIT (Appeals)-2, Jaipur, dated 03.01.2024, pertaining to the assessment year 2012-13.

The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case, order passed by CIT(A) Addl/JCIT-2, Jaipur is bad both in the eye of law and on facts.

2.(1) On the facts and circumstances of the case, CIT(A) Addl/JCIT-2 has erred, both of facts and in law, in passing the order without giving assessee an appropriate and adequate opportunity of being heard in violation of the principle of natural justice.

(ii) That the reason for non appearance before the CIT(A) Addl/JCIT-2 was beyond the control of the assessee.

3. On the facts and circumstances of the case, CIT(A) Addl/JCIT-2 has erred both on facts and in law in passing the order without giving any findings on the merits of the case

4. (i) On the facts and circumstances of the case, CIT(A) Addl/JCIT-2 has erred, both of facts and in law, in confirming the addition of an amount of Rs. 14,59,200/-, made by the Assessing Officer on account of income from short term capital-gain.

(ii) The addition has been made by taking the Sale consideration as the capital Gain against the capital gain actually accrued.

5. The applicant craves leave to add, amend or alter any of the grounds of appeal.”

2. Facts, in brief, are that as per NMS information received, the AO noticed that during F.Y. 2011-12, relevant to A.Y. 2012-13, the assessee had deposited cash amounting to Rs. 23,55,000/- in his savings bank account with Oriental Bank of Commerce, Israna, Panipat. The assessee had not disclosed the source of deposit. After recording reasons and obtaining prior approval, the case was reopened u/s 147/148. The assessee's explanation before the AO was that had sold a residential house for sale consideration of Rs. 17,00,000/- out of which cash amounting to Rs. 16,50,000/- was deposited during the relevant period and balance Rs. 7,00,000/- was reverse entries. The AO worked out the capital gain at

Rs. 14,59,000/- on sale of residential property as against Rs. 1,94,200/- and added the same to the returned income. Thus, the AO completed the assessment at Rs. 16,41,453/-. Against this the assessee preferred appeal before the learned CIT(A), who dismissed the appeal by affirming the order of AO. Aggrieved, the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee submitted that there was no adequate representation on behalf of assessee before the authorities below. She prayed that in the interest of natural justice, orders of authorities below may be set aside and matter restored to the file of AO for decision afresh, after affording adequate opportunity to the assessee to furnish documentary evidence, if any, in support of its case.

4. Learned DR opposed the submissions made on behalf of the assessee.

5. I have heard rival submissions and perused the material available on record. Considering the fact that there was no effective representation on behalf of the assessee before the authorities below, in order to subserve the interests of natural justice and to provide an opportunity to the assessee to effectively represent his case, the orders of authorities below are set aside and the matter is restored to the file of AO for decision afresh, after affording adequate opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 21.05.2024.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**