

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No. 8531/Del/2019
निर्धारणवर्ष/Assessment Year: 2009-10**

VINOD, H.No. 250, Nistoli, Ghaziabad, Uttar Pradesh.	Vs.	Income Tax Officer, Ward 2(5), Ghaziabad, Uttar Pradesh.
PAN No. ALFPV4078F		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri V. Rajakumar, Adv.
राजस्वकीओरसे /Revenue by	Shri Kanv Bali, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	07.06.2024
उद्घोषणाकीतारीख/ Pronouncement on	07.08.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of Ld.CIT(Appeals), Ghaziabad dated 23.04.2019 for the AY 2009-10.

The assessee has raised the following grounds: -

- "1. On the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) erred in dismissing the appeal without providing due and adequate opportunity of hearing;*
- 2. On the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) erred in not admitting*

additional evidence as submitted during the hearing thereby denying the assessee appropriate opportunity to present the case on merits;

3. *On the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) erred in confirming the following actions of the Assessing Officer in:*
 - a. *initiating proceedings under Section 147/144 of the Income Tax Act, 1961 ('the Act') without there being any service of notice and also reasons to belief of escapement of income;*
 - b. *passing order u/s 147/144 of the Act determining taxable income in a sum of Rs.91,06,000/-;*
 - c. *construing the total sale consideration of immovable property in a sum of Rs.91,06,000/- as income subject to tax.*

All the above actions being erroneous unlawful and untenable it is prayed that the same must be quashed with directions for appropriate relief.”

2. The Ld. Counsel for the assessee submits that the impugned appellate order of the Ld.CIT(A), Ghaziabad dated 23.04.2019 was received by the assessee on 22.05.2019 and, therefore, the appeal was required to be filed before the Tribunal by 21.07.2019. However, the appeal was filed by the assessee before the Tribunal on 01.11.2019 with a delay of 103 days. The Ld. Counsel submits that the reason for delay is that the assessee was unaware of the procedure of filing appeals and particularly before the Tribunal. It is submitted that the assessee's husband who is looking after the

Income tax matters has been diagnosed with mental ill health and his medical condition deteriorated significantly and had necessitated frequent hospital visits, extensive medical treatment and home care. The Ld. Counsel submits that assessee has furnished medical reports of the relevant period. Therefore, the Ld. Counsel submits that the delay has been caused due to reasonable and plausible reasons. The explanation of the assessee is *bona fide* and stands supported by the medical records of her husband. The delay in filing the appeal by the assessee before the Tribunal is not intentional but due to the reasons beyond her control. Therefore, in the interest of justice, it is prayed that the appeal may be admitted by condoning the delay and may be adjudicated on merits.

3. Coming to merits the Ld. Counsel for the assessee at the outset submits that the appeal of the assessee was disposed of by the Ld.CIT(A) *ex parte* without giving due opportunity of being heard. The Ld. Counsel further submits that the reassessment was completed u/s 144 r.w.s. 147 of the Act on 30.12.2016 and on perusal of the assessment order it can be seen that initially notice u/s 148 was issued on 21.03.2016 and one more notice was issued u/s 142(1) of the Act later on 09.05.2016 and a final show cause was

said to have been issued on 29.11.2016 and the reassessment was completed on 30.12.2016 observing that there was no compliance by the assessee. The Ld. Counsel for the assessee submits that none of these notices were served on the assessee. The Ld. Counsel for the assessee, therefore, submits that the matter may be restored to the file of the AO for fresh assessment after providing adequate opportunity of being heard.

4. Ld. Departmental Representative has no objection.

5. On hearing both the parties and perusing the record before us and the reasons given on delay in filing the appeal it is observed that the assessee had sufficient cause for filing the appeal with delay of 103 days. Therefore, in the interest of justice, the delay of 103 days is condoned and the appeal is taken on record for adjudication on merits.

6. Coming to merits of the case, it is observed from the assessment order that the Assessing Officer completed the assessment u/s 144 r.w.s. 147 of the Act by making an addition of Rs.91,06,000/- being the sale proceeds of immovable property under the head "Capital Gains". The Ld.CIT(A) sustained the addition made by the AO in the form of capital gains taking into

consideration observations made by the Assessing Officer in the remand report. The assessee submits that the Ld.CIT(A) did not admit additional evidences furnished by the assessee before him and without giving any opportunity the appeal was decided *ex parte*.

7. Considering the totality of facts and circumstances into consideration this appeal is restored to the file of the Assessing Officer with a direction to make fresh assessment in accordance with law after providing adequate opportunity of being heard to the assessee. The assessee is at liberty to file necessary documents to support her contentions. Grounds raised by the assessee are allowed for statistical purpose.

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

Order pronounced in the open court on 07/08/2024

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Dated: 07.08.2024

*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi