

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1203/DEL/2024
Assessment Year: 2016-17

Atul Talwar AR of Kailash Talwar, 185, Sukhdev Vihar, Delhi-110025 PAN- ACFPT 2518 K	<u>Vs</u>	Income-tax Officer, Ward-28(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Kailash Talwar, Adv.	
Respondent by	Shri Sanjay Kumar, Sr. DR	
Date of hearing	12.08.2024	
Date of pronouncement	22.08.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi, dated 16.01.2024, pertaining to the assessment year 2016-17. The assessee has raised following grounds of appeal:

“1. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in dismissing appeal of the Appellant just only for non prosecution and non appearance of assessee.

2. The order passed by learned Commissioner (Appeals), National Faceless Appeal violates the principal of natural justice.

3. The Assessee " Smt. Kailash Talwar" is dead and all impugned notices and assessment order issued in the name of deceased person are invalid. It is settled proposition of law that proceedings initiated and orders passed in the name of the dead person is not valid. The Death Certificate is already submitted as evidence

4. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in simply dismissal of appeal summarily without even referring to the elaborate statement of facts and specific issues raised in the grounds of appeal.

5. The appeal before the CIT(Appeals) holds substantial merits, and the appellant seeks a fair opportunity."

2. Facts, in brief, are that for A.Y. 2016-17 the assessee filed his return of income on 21.03.2018 declaring income of Rs. 38,64,210/-. The case was selected for limited scrutiny assessment on the ground that assessee had sold property at Rs. 70,50,000/- whereas stamp duty valuation of property had been taken at Rs. 1,32,79,669/-. Cost of acquisition with indexation was shown at Rs. 31,58,529/-; and cost of improvement was taken at Rs. 29,62,883/-. Total long term capital gain was calculated at Rs. 71,58,257/- and exemption u/s 54 was claimed at Rs. 33,66,500/-. Thus, long term capital gain was calculated at Rs. 37,91,757/-. Further there was cash deposit of Rs. 14,60,000/-. The AO completed the assessment at a total income of Rs. 1,49,72,054/-, as against returned income of Rs. 38,64,210/-, by adding Rs. 96,47,844/- on account of long term capital gain; and Rs. 14,60,000/- as unexplained cash credit u/s 69A of the Act. Aggrieved against it the assessee preferred appeal to the learned CIT(Appeals), who dismissed the appeal and

upheld the action of AO. Aggrieved against it the assessee is in appeal before this Tribunal.

3. At the outset learned counsel for the assessee submitted that learned CIT(Appeals) has dismissed assessee's appeal in limine, ex parte to the assessee, and without going into the merits of the case. He prayed that order of learned CIT(Appeals) may be set aside and matter may be restored to his file for fresh decision after affording reasonable opportunity of being heard to the assessee.

4. On the other hand learned DR supported the orders of authorities below.

5. I have heard rival submissions and perused the material available on record. A perusal of order passed by learned CIT(Appeals) would reveal that he has dismissed assessee's appeal, inter alia, by observing as under:

".... Therefore, it has been construed that the assessee is not interested in prosecuting the appeal. In the instant case, I am refraining from discussion and to decide the ground of Grounds of appeal on merits. The grounds of appeal are dismissed herewith for non-prosecution."

5.1 Since the learned First Appellate Authority has dismissed assessee's appeal, for want of prosecution and without going into the merits of the case, to sub serve the interests of natural justice I hereby set aside the order of learned CIT(Appeals) and restore the matter back to the file of learned CIT(Appeals) to decide appeal on

merit after affording adequate opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

6. Assessee's appeal is allowed for statistical purposes.

Order pronounced in open court on 22nd August, 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