

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

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.2229/Del/2024

निर्धारणवर्ष/Assessment Year: 2012-13

RENU MEHRA C-117, Sector-8, Gautam Budh Nagar, Uttar Pradesh. PAN No. ADUPM1853E	बनाम Vs.	INCOME TAX OFFICER, Ward 5(3)(2), Aayakar Bhawan, A-2D, Sector-24, Gautam Budh Nagar, Uttar Pradesh.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Satyajeet Goel, CA
राजस्वकीओरसे /Revenue by	Shri Ram Krishan Meena, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	06.08.2024
उद्घोषणाकीतारीख /Pronouncement on	10.09.2024

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals)-NFAC, Delhi dated 09.01.2024 for the AY 2012-13.

The assessee raised the following grounds in its appeal: -

- 1.1 *“That on the facts and circumstances of the case, the CIT(A) has erred in passing ex-parte order u/s 250 of the Income tax Act, 1961 without affording reasonable and proper opportunity of being heard.*
- 1.2 *That in the absence of any intimation or service of physical notice of hearing, the order u/s 250 has been passed in contravention of principles of natural justice and same is bad in law.*
- 1.3 *That the ex-parte order having been passed without any inquiry and in absence of any finding*

or determination on merits in terms of section 250(4) and 250(6) of the Act, the impugned order is invalid and contrary to law.

- 2.1 *That on the facts and circumstances of the case, the CIT(A) was not justified in upholding the validity of assessment order u/s 147 even though the same was passed without service of notice u/s 148 of the Act.*
- 2.2 *That in the absence of valid service of notice u/s 148 on the appellant, the assessment order u/s 148 so passed is invalid and void-ab-initio.*
- 3.1 *That on the facts and circumstances of the case, of the CIT(A) has grossly erred in upholding the notice u/s 148 of the Act even though the reasons recorded are factually incorrect, illegal and not in accordance with law.*
- 3.2 *That in the absence of there being any case of income escaping assessment in terms of section 147 of the Act, the CIT(A) has fallen into error in upholding the assumption of jurisdiction and consequential assessment order u/s 147 of the Act.*
- 3.3 *That the approval u/s 151 being invalid and without application of mind rendering the notice u/s 148 is invalid, the assessment order so passed is non-est and bad in law.*
- 4.1 *That on the facts and circumstances of the case, the CIT(A) has grossly erred in upholding addition of Rs.33,00,640/- on the alleged ground of undisclosed long term capital gain on sale of immovable property without appreciating the facts of the case.*
- 4.2 *That the appellant having duly disclosed the sale transaction in its return of income and there being a case of long term capital loss, the addition on account of long term capital gain is highly arbitrary and directly contrary to the facts of the case.*

- 4.3 *The CIT(A) has fallen into an error in upholding the addition of account of long term capital gain without even verifying the basic facts and ITR filed by the appellant and the order so passed is mechanical and devoid of merits.*
- 4.4 *That the working of so-called long term capital gain being factually incorrect and not backed by any document, the entire basis addition is misconceived and totally untenable.*
5. *That the orders passed by the lower authorities are not justified on facts and are bad in law.*
6. *That the appellant craves leaves to add, alter, amend, forgo any of the grounds of appeal at the time of hearing.”*

2. Ld. Counsel for the assessee, at the outset, submits that there is a delay of 59 days in filing the appeal by the assessee before the Tribunal and a petition for condonation of delay is filed by the assessee requesting for condonation of delay. Referring to the application for condonation of delay the Ld. Counsel submits that the assessee is a house wife and a senior citizen and having no knowledge of Income tax matters as these matters were being handled by her husband Late Shri Anil Kumar Mehra who unfortunately expired on 17.11.2021 after completion of assessment as well as filing the appeal before the Ld.CIT(A).

3. Ld. Counsel further submits that in Form No.35 the e-mail address of the Late husband of the assessee was mentioned for the

purpose of communication of hearing. However, upon the sad demise of her husband the assessee had no intimation of any notice or order which was sent on the inexcusable e-mail of her late husband.

4. Ld. Counsel further submits that the mobile number mentioned in Form No.35 was also deactivated long back and thus, there was no intimation to the assessee regarding the online appellate proceedings before the Ld.CIT(A) and, therefore, the proceedings before the Ld.CIT(A) were unattended and an *ex parte* order passed by the Ld.CIT(A). Ld. Counsel therefore submits that the delay in filing the appeal before the Tribunal is neither willful nor wanton and the same will be made condoned in the interest of justice.

5. On hearing both the sides, perusing the condonation of delay, I find that the assessee had reasonable cause in filing the appeal belatedly and therefore the delay of 59 days in filing the appeal before the Tribunal is condoned and the appeal is taken on record.

6. On ground no.1 of grounds of appeal of the assessee is with respect to the Ld. CIT(A) passing an *ex parte* order without providing an opportunity of hearing. Facts suggest that the assessee

is a senior citizen and a house wife the Income tax matters were previously handled by her late husband and the e-mail address in Form No.35 was mentioned by her late husband. Therefore, the assessee could not receive any communication of hearing notices from the Ld.CIT(A). The Ld.CIT(A) passed *ex parte* order as there was no compliance by the assessee. Taking the totality of facts and circumstances into consideration I feel it appropriate to remit this matter back to the file of the Ld.CIT(A) for fresh adjudication after providing adequate opportunity of being heard and at the same time the assessee is directed to cooperate with the proceedings before the Ld.CIT(A) by providing the correct address and telephone number for providing communication. With these observations this appeal is restored to the file of the Ld.CIT(A) for fresh adjudication.

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

Order pronounced in the open court on 10/09/2024

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 10.09.2024

*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