

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA Nos.303 to 305/Ind/2024
(Assessment Years: 2013-2014 to 2015-2016)

Smt. Geeta Bai, Gram Pipalkhedhi, Pipalkhedhi Berasia, Bhopal	Vs.	ITO 4(4), Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: EUGPB6402P		
Assessee by	Shri S.S. Solanki, AR	
Revenue by	Shri Ashish Porwal, SR.DR	
Date of Hearing	19.09.2024	
Date of Pronouncement	23.09.2024	

ORDER

Per Vijay Pal Rao, JM:

These 3 appeals by the assessee are directed against 3 separate orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC) Delhi dated 02.11.2023, 17.01.2022 and 17.01.2024 for the Assessment Years 2013-2014 to 2015-16 respectively.

2. There is a delay of 98 days in filing the appeals for the Assessment Year 2013-14, 22 days for the Assessment Year 2014-15 and 23 days for the Assessment Year 2015-16. The assessee has filed separate applications for condonation of delay which are supported by 3 separate affidavits of the assessee one for each year.

2.1 We have heard the Ld. AR as well as Ld. Departmental Representative and carefully perused the evidences filed by the assessee explaining the cause of its delay. The assessee in the affidavit has stated that the assessee is a cardiac patient and was confined to back during the relevant period which has caused the delay of 98 days, 22 days and 23 days respectively in filing these appeals. Having considered the reasons explained by the assessee which is supported by the affidavit we are satisfied that the assessee was having a sufficient cause for the delay in filing these 3 appeals. Accordingly the delay of 98 days, 22 days and 23 days in filing these appeals for Assessment Year 2013-14, 2014-15 and 2015-16 respectively is condoned.

3. The assessee has raised following grounds of appeal:

ITA. No.303/Ind/2024 A.Y 2013-14:

- "1. That in the facts and circumstances of the case the very initiation of proceeding u/s 147 and issuance of notice u/s 148 are bad in law, invalid therefore, the assessment is liable to be annulled.*
- 2. That in the facts and circumstances of the case the initiation of proceeding u/s 147/148, and completion of assessment order u/s 147 and appellate order under section 250 are bad in law as well as on facts and are liable to be annulled.*
- 3. That in the facts and circumstances of the case the appellant did not get the opportunity of being heard and hence the order is against the natural justice of law. The Learned CIT Appeals upheld the ex parte order passed by the Ld. AO with addition of Rs.91,90,500/- to the income of appellant which is bad in law and erroneous.*
- 4. That in the facts and circumstances of the case the appellate and assessment orders are passed in haste without providing any opportunity to the appellant which is against the principles of natural justice.*
- 5. That in the facts and circumstances of the case the addition of Rs. 91,90,500/- has been made in the hands of the appellant without any cogent evidence merely on the basis of surmises and conjectures.*
- 6. That in the facts and circumstances of the case no cost of acquisition, cost of improvement and expenses relating to transfer of land has been considered which is bad in law and erroneous.*
- 7. That in the facts and circumstances of the case the entire amount of capital gain was exempt under section 54F since the appellant had constructed residential house out of the sale proceeds which is not considered by the CIT Appeals whilst passing the appellant order.*
- 8. That the appellant craves leave to add to amend alter modify substitute withdrawal delete or rescind all or any of the above grounds of appeal on or before the final hearing if necessary so arises."*

ITA. No.304/Ind/2024 A.Y 2013-14:

- "1. That in the facts and circumstances of the case the very initiation of proceeding u/s 147 and issuance of notice u/s 148 are bad in law, invalid therefore, the assessment is liable to be annulled.*
- 2. That in the facts and circumstances of the case the initiation of proceeding u/s 147/148, and completion of assessment order u/s 147 and appellate order under section 250 are bad in law as well as on facts and are liable to be annulled.*
- 3. That in the facts and circumstances of the case the appellant did not get the opportunity of being heard and hence the order is against the natural justice of law. The Learned CIT Appeals upheld the ex parte order passed*

by the Ld. AO with addition of Rs.19,80,000/- to the income of appellant which is bad in law and erroneous.

4. That in the facts and circumstances of the case the appellate and assessment orders are passed in haste without providing any opportunity to the appellant which is against the principles of natural justice.

5. That in the facts and circumstances of the case the addition of Rs. 19,80,000/- has been made in the hands of the appellant without any cogent evidence merely on the basis of surmises and conjectures.

6. That in the facts and circumstances of the case no cost of acquisition, cost of improvement and expenses relating to transfer of land has been considered which is bad in law and erroneous.

7. That in the facts and circumstances of the case the entire amount of capital gain was exempt under section 54F since the appellant had constructed residential house out of the sale proceeds which is not considered by the CIT Appeals whilst passing the appellant order.

8. That the appellant craves leave to add to amend alter modify substitute withdrawal delete or rescind all or any of the above grounds of appeal on or before the final hearing if necessary so arises."

ITA. No.305/Ind/2024 A.Y 2013-14:

"1. That in the facts and circumstances of the case the very initiation of proceeding u/s 147 and issuance of notice u/s 148 are bad in law, invalid therefore, the assessment is liable to be annulled.

2. That in the facts and circumstances of the case the initiation of proceeding u/s 147/148, and completion of assessment order u/s 147 and appellate order under section 250 are bad in law as well as on facts and are liable to be annulled.

3. That in the facts and circumstances of the case the appellant did not get the opportunity of being heard and hence the order is against the natural justice of law. The Learned CIT Appeals upheld the ex parte order passed by the Ld. AO with addition of Rs.4,37,500/- to the income of appellant which is bad in law and erroneous.

4. That in the facts and circumstances of the case the appellate and assessment orders are passed in haste without providing any opportunity to the appellant which is against the principles of natural justice.

5. That in the facts and circumstances of the case the addition of Rs.4,37,500/- has been made in the hands of the appellant without any cogent evidence merely on the basis of surmises and conjectures.

6. That in the facts and circumstances of the case no cost of acquisition, cost of improvement and expenses relating to transfer of land has been considered which is bad in law and erroneous.

7. That in the facts and circumstances of the case the entire amount of capital gain was exempt under section 54F since the appellant had

*constructed residential house out of the sale proceeds which is not considered by the CIT Appeals whilst passing the appellant order.
8. That the appellant craves leave to add to amend alter modify substitute withdrawal delete or rescind all or any of the above grounds of appeal on or before the final hearing if necessary so arises."*

4. At the time of hearing Ld. AR has submitted that CIT(A) has passed the impugned order ex-parte when there was no response on behalf of the assessee to the notices issued by CIT(A). He has pointed out that the appeals of the assessee were dismissed due to the reasons that despite the notices there was no submission made on behalf of the assessee. The Ld. AR has submitted that the assessee has not received any notice of CIT(A) and therefore the assessee could not file any submissions before CIT(A). He has further submitted that the A.O while framing the assessment u/s 144 r.w.s. 147 of the Act has made the additions of the entire sale consideration by treating the same as Long Term Capital Gain. Thus he has submitted that the matter is required to be reconsidered for allowing the deduction on account of cost of acquisition as well as deduction u/s 54 of the Act. The Ld. AR has pleaded that the impugned order may be set aside and the matter may be remanded to the record of the A.O for fresh adjudication

after considering the relevant details and evidence to be filed by the assessee.

5. On the other hand Ld. Departmental Representative has raised no objection if the matter is remanded to the record of the A.O for fresh adjudication.

6. Having considered the rival submissions and careful perusal of the impugned order we note that the CIT(A) has passed the impugned order ex-parte and dismissed the appeal of the assessee on the ground that no submissions have been made by the assessee. We further note that CIT(A) has not given the details of any notices of hearing issued to the assessee for the impugned order. Further A.O while framing the assessment on best judgment basis and assessed the entire sale consideration to tax without considering the cost of acquisition. Hence, in the facts and circumstances of the case we are of the considered view that the matter requires reconsideration at the level of the A.O for assessing the capital gain if any after taking into consideration the cost of acquisition as well as the claim of deduction u/s 54 of the Act to be substantiated by the assessee by filing relevant details and evidence. Accordingly, the impugned orders of CIT(A) for the

Assessment Year 2013-14, 2014-15 and 2015-16 are set aside and all three matters are remanded to the record of jurisdictional A.O for fresh adjudication after giving an opportunity of hearing to the assessee.

7. In the result appeals of the assessee for Assessment Year 2013-14, 2014-15 and 2015-16 are allowed for statistical purpose.

Order pronounced in the open court on 23.09.2024.

Sd/-

(B.M. BIYANI)
Accountant Member

Sd/-

(VIJAY PAL RAO)
Judicial Member

Indore, 23.09.2024
Dev/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore