

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI R.S. SYAL, AM & MS. SUCHITRA KAMBLE, JM

ITA No.3760/Del/2012
Assessment Year : 2005-06

ITO,
Ward 48 (1),
New Delhi.

Vs. Mrs. P.L. Anand,
C-97, Anand Niketan,
New Delhi.
PAN: ADRPA4245M

(Appellant)

(Respondent)

Appellant by : None

Respondent by: Shri Rajesh Kumar Kedia, Sr.DR

Date of Hearing : 29.09.2015

Date of Pronouncement: 30.09.2015

ORDER

PER R.S. SYAL, AM:

This appeal by the Revenue is directed against the order passed by the CIT(A) on 11.5.2012 in relation to the Assessment Year 2005-06.

2. The only issue raised in this appeal through three grounds is against the deletion of addition of Rs.9,60,040/- made by the Assessing Officer (AO) on account of unexplained/undisclosed income.

3. Briefly stated, the facts of the case are that the assessee received two cheques, both dated 25.10.2004, amounting to Rs.6,66,000/- and Rs.2,94,040/-, which were deposited in her bank account, against which a demand draft dated 29.11.2004 was issued in favour of Shri T.R. Anand, the assessee's husband. On being called upon to tender confirmation in respect of the source of cheques deposited, the assessee submitted a confirmation from Shri T.R. Anand, stating that the cheques were received by his wife against cancellation of the booking of some flat. Once again, the assessee was required to submit documentary evidence in support of the source of these two cheques. The assessee's husband submitted an affidavit dated 14.12.2007 that he along with his wife booked a flat with Shri Y.P. Bhatia (NRI) at Janak Puri and paid Rs.9 lac. It was submitted that the booking of flat was cancelled and a sum of Rs.9 lac was refunded by means of cheques in the name of the assessee. It was claimed to be this amount, which was deposited in her bank account. Once again, the AO required the assessee to submit documentary evidence in support of the source of cheques. Neither any reply was given nor any adjournment was sought. Resultantly, the AO made addition of Rs.9,60,040/- by treating it as income from unexplained/undisclosed sources. When the matter came up before the

ld. CIT(A), the assessee challenged the issue of notice u/s 143(2) after the expiry of one year from the end of the month in which the return was filed. This contention of the assessee was rejected by the ld. CIT(A) after obtaining a remand report from the AO. On merits, the assessee submitted that two pay orders for Rs.6,66,000/- and Rs.2,94,040/- were received on 15.10.2004 from Smt. Ritu Singh, w/o Shri Ashok Kumar Singh, resident of 1195, Sector 37, Faridabad, towards the sale consideration of flat No.B-1/A/47A, Janak Puri, New Delhi, which were deposited in the assessee's bank account. The ld. CIT(A) got convinced with the assessee's submissions and deleted the addition. The Revenue is aggrieved against the deletion of addition.

4. We have heard the ld. DR and perused the relevant material on record. There is no appearance from the side of the assessee despite notice. As such, we are proceeding to dispose of the appeal *ex parte qua* the assessee.

5. It is observed that the assessee took a stand before the AO that two cheques totaling Rs.9,60,040/- were received towards refund of amount of cancellation of flat booked with Shri Y.P. Bhatia (NRI) at Janak Puri. When the AO required the assessee to substantiate this argument and

furnish evidence in support of the receipt of amount, there was no compliance. However, during the course of the first appellate proceedings, an altogether different stand was taken that this amount of Rs.9,60,040/- was received as sale consideration for sale of property located at Sector 37, Faridabad. The Id. CIT(A) appears to have been swayed by the submissions made before him in disregard to the arguments advanced at the stage of assessment. Even though he called for a remand report from the AO *qua* the validity of assessment, which contention was rejected by him, but, there is no reference to the comments of the AO on a new stand taken before him. In our considered opinion, the view taken by the Id. CIT(A) is *ex facie* unsustainable because of the apparent conflict in the view canvassed by the assessee before the AO and the Id. CIT(A). Here, we want to make a mention that the assessee contended before the Id. CIT(A) that a photocopy of such sale agreement was filed with the AO. We do not find any discussion about this aspect in the assessment order. Under such circumstances, we set aside the impugned order and remit the matter to the file of the AO for deciding this issue afresh, after allowing a reasonable opportunity of being heard.

6. In the result, the appeal is allowed for statistical purposes.

The decision was pronounced in the open court on 30th September, 2015.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.S. SYAL)
ACCOUNTANT MEMBER

Dated: 30th September, 2015.

dk

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Dy. Registrar, ITAT, New Delhi