IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH
'SMC' CHANDIGARH

BEFORE: SMT. DIVA SINGH, JM

ITA No. 240/CHD/2020

Assessment Year : 2011-12

Shri Surinder Kumar Malhotra, Kripal Ashram, Gali Chopra Wali, Sirsa.	d VS	The ITO, Ward – 3, Sirsa.
PAN No: AAXPM6577D		
Appellant		/Respondent

Assessee by : None

Revenue by : Dr. Ranjeet Kaur, Sr.DR

Date of Hearing : 29.06.2022

Date of Pronouncement : 09.09.2022

ORDER

The present appeal has been filed by the assessee wherein the correctness of the order dated 11 . 03 . 2022 passed by NFAC, Delhi acting as First Appellate Authority pertaining to 2011 – 12 assessment year is assailed on the following grounds :

1. That the Ld. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant against the order passed by the Learned Assessing Officer (Ld. AO) which is bad in law, invalid and unjustified.

2. That the Ld. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant and in not appreciating that the notice issued under Section 148 of the Income Tax Act, 1961 wrongly stated that the assessee has not filed return of income for the relevant year thus the notice was issued without verification of records, application of mind and making any enquiry; hence deserves to be treated as invalid.

3. That the Ld. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant and in not considering the submissions of the appellant that assumption of the jurisdiction under Section 147 of the Income Tax Act 1961 without specifying that how the appellant had not declared fully and truly all

material facts necessary for his assessment for that assessment year is invalid and the assessment is unwarranted in the eyes of law.

4. That the Ld. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant without appreciating that the approval given by the Ld. PCIT under Section 151 of the I.T.Act, 1961 is without independent application of mind.

5. That the Ld. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant and in disallowing the deduction under Section 54F of the IT. Act, 1961 amounting Rs. 17,61,581 without verifying the facts and without considering the submission of the appellant.

6. That the Ld. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant completely ignoring the applicable judicial precedents from different High Courts including the jurisdictional High Court of Punjab and Haryana.

7. That the grounds of appeal are without prejudice to each other.

8. That the appellant respectfully craves to add, amend, alter and /or forego any ground at or before the time of hearing.

2. At the time of hearing, no one was present on behalf of the assessee. The appeal was passed over. In the second round also, the position remained the same. The assessee was neither present nor represented. However, considering the material available on record, it was deemed appropriate to proceed with the present appeal ex- parte qua the assessee appellant on merits after hearing ld. Sr.DR.

3. Before addressing the specific issue agitated in the appeal, it is necessary to address the delay of four days pointed out by the Registry in the filing of the present appeal by the assessee. The assessee' s application is available on record pleading that the copy of the impugned order shown to be dispatched on 11.01.2020 was received on 14.01.2020. It has been submitted

that if the limitation from thereon is considered then the appeal of the assessee filed on 07.07.2020 is not delayed.

3.1 1 The ld. Sr.DR was heard. Considering the pleading on facts she did not pose any objection to the Condonation of delay of four days.

3.2 2 Accordingly, considering the record and the submissions, the delay of four days is condoned. It is seen that no advantage has been derived by the assessee in f iling the appeal late nor any disadvantage can be said to be visited upon the Revenue if the appeal is taken up for hearing on merits. Ordered accordingly.

4. The ld. Sr. DR was required to argue the appeal. She relied on the orders.

5. The relevant facts of the case are that qua the Long Term Capital Gain available to the assessee in the year under consideration deduction u/s 54 of the Act was claimed. The said claim was disallowed holding that the proceeds have been applied to acquiring two separate properties. The assessee has pleaded that these were adjoining properties and may be treated as a single unit in terms of various decisions available. However, the said request was not accepted. The ld. CIT(A) has dismissed the appeal on the legal issue and has held in para 6 that the assessee has not argued anything further.

6. The attention of the ld. Sr.DR was invited to the statement of facts recorded by the ld. First Appellate Authority in page 2 of the impugned order itself where it is claimed that two adjoining houses were purchased. Hence, the claim was allowable. The ld. Sr.DR could not controvert the argument. For the record, reliance was still placed on the impugned order.

7. I have heard the submissions and perused the material on record. On a consideration of the facts and circumstances as available on the record itself, I find that the impugned order cannot be upheld. Before elaborating the reasons on the basis of which the said conclusion has been arrived at, it is necessary to address the grievance of the assessee before the First Appellate Authority. A perusal of the same shows that the following grounds were before the CIT(A) :

(i) That the order passed by the Ld. AO is bad in law invalid and unjustified.

(ii) That the AO has erred on facts and in law in issuing the notice u/s 148 of the Income tax 1961 wrongly stating that the assessee has not filed return of income for the relevant year thus the notice for the relevant year thus the notice has been issued without verification of records, application of mind and making any inquiry, hence deserves to be treated as invalid, (iii) That the AO has erred on facts, and in law in as summing the jurisdiction u/s 147 of the IT Act, 1961 without specifying that how the appellant has not declared fully and truly all material facts necessary for his assessment for that assessment year.

Thus the reasons recorded are invalid and the assessment is unwarranted in the eyes of law.

(iv) That the Ld. CIT has erred on facts and in law in grating the approval as the approval has been granted without independent application of mind.

(v) That the AO has erred on facts and in law in making the assessment at an income of Rs.21,11,011/- against the returned income of Rs.3,49,430/- after disallowing deduction of Rs.17,61,581/-.

(vi) That the AO has erred on facts and in law in disallowing the deduction u/s 54F of the ' IT Act, 1961 amounting Rs. 17,61,581/- without verifying the facts and without considering the submission of the appellant.

(vii) That the AO has erred on facts ad in law in disallowing the deduction u/s 54F of the IT Act, 1961 amounting. Rs. 17,61,581/- completely ignoring the applicable judicial precedents from different High Courts.

(viii) That the AO has erred on facts and in law in disallowing the deduction u/s 54F of the IT Act, 1961 amounting Rs.1761.581/-ignoring the fact that the amendment to Sec.74.F was made with effect from 01.04.2015 and is not relevant to the case of appellant.

(xi) That the AO has erred on facts and in law in levying the interest u/ s 234B and 234C of the IT Act, 1961.

(xii) That the appellant respectfully craves to add, amend alter and or forego any ground at or before the time of hearing.

7.1 1 It is further seen from page 2 of the impugned order that following statement of facts made available by the assessee has been recorded by the CIT(A) in the order itself:

"Para 3. <u>Statement of facts submitted by the assessee at the time of appeal is reproduced as under:-</u>

*"The **appellant is a senior citizen and a law** abiding person. The assessee had sold one building for Rs.30,62,000/- during the relevant year and earned long term capital gain of Rs. 17,61,581/-. **The assessee purchased two adjoining residential houses through sale deeds** dated 07.12.2010 and 21.03.2011 for Rs.6,95,500/- and Rs.14,63,760/- respectively and accordingly claimed deduction u/s 54F of the IT Act, 1961 treating the same as a single house as per settled position. However, the AO did not allow the deduction u/s 54F ignoring the judicial precedents from, different High Courts and added the whole amount of LTCG of Rs.17,61,581/- to the income of the assessee and assessed the income of the assessee at Rs.21,31,011/- against the returned income o f Rs.3,49,430/- ."*

(emphasis supplied)

7.2 2 When pleadings in the said facts is taken into consideration and the finding arrived at in para 6 . 2 is taken into consideration, it is seen that the ld. CIT(A) has completely ignored the facts pleaded on record. It is evident that that assessee, no doubt has purchased two separate residential houses, however, it is also a fact that consistently the assessee who is a senior citizen has

pleaded in writing on record that these were adjoining residential houses, hence, constituted a single unit. It is seen that no finding has been given by the Tax Authorities on this claim. It is seen that the legal position on two adjoining flats, if constituting a single residential unit is well settled. Recording my painful dissatisfaction and disappointment in the passing of orders of the authorities, I set aside the order for a factual verification on facts back to the file of the Assessing Officer. The prayer of the ld. Sr.DR is accepted to the extent that matter needs verification at the end of the AO. Accordingly, the impugned order is set aside back to the file of the AO with a direction to pass a speaking order in accordance with law. Needless to say that in case the assessee's prayer on facts is not to be accepted, a reasonable opportunity of being heard is to be granted putting the issue to the notice of the assessee.

8. Before parting, it is my painful duty to record wherein the facts of the present case where the assessee is shown to be a senior citizen. The obdurate attitude of ignoring the written pleadings on record are most unfortunate. Unfortunately such arbitrary orders reek of a backlog of a colonial mind set. It needs be kept in mind that the Tax Authorities are acting as servants of the Government of India. Hence, are expected to be live and alert to the citizens for whom and on whose behalf, the functionaries of the State act. In the blind race of showing high disposal the

careless ignoring of facts pleaded causes unaccounted harm to the reputation and fairness of the Tax Administration. It erodes the trust and faith of the citizens in the fairness of the functioning of the tax administration. It not only causes harassment to the citizens but also reflects on the arbitrary functioning of the tax administration. Such a reputation and record should not be created.

9. Accordingly, with the above observations, the impugned order is set aside back to the f ile of the AO with the aforesaid directions. Said order was pronounced in the Open Court at the time of hearing itself.

10. . In result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 09 th September,2022.

Sd/-

(DIVA SPINGH)
Judicial Member