

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
Sh. O.P.KANT, ACCOUNTANT MEMBER**

**I.T.A .No.-3605/Del/2012
(ASSESSMENT YEAR-2008-09)**

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| Manorama Shandilya, 314, Jagriti Enclave, Vikas Marg, New Delhi-110092. PAN-ACPPS1059L (APPELLANT) | vs | ACIT, Circle-33(1), New Delhi. (RESPONDENT) |
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| Assessee by | Sh.Satish Aggarwal, CA |
| Revenue by | Sh. P.DAM. Kanunjna, Sr. DR |

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| Date of Hearing | 10.03.2016 |
| Date of Pronouncement | 16.05.2016 |

ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the assessee assailing the correctness of the order dated 18.05.2012 of CIT(A)-XXVII, New Delhi pertaining to 2008-09 assessment year on various grounds. However, at the time of hearing the parties were only heard in respect of Ground No.1 which reads as under:-

1. *“That the order of the Learned Commissioner of Income Tax (Appeals) XXVII is arbitrary, biased, bad in law and facts of the case.”*
2. The relevant facts of the case are that the assessee in the year under consideration declared a total income of Rs.7,35,753/- from Profit & Gains from business, tuition income, consultancy receipts, income from house property and LIC commission etc. The case was selected for scrutiny through CASS. Accordingly notice u/s 143(2) and 142(1) etc. were issued. Various opportunities

were provided by the AO. Initially the assessee was represented by a Chartered Accountant thereafter more or less the assessee's husband has appeared and has always sought time. In response to the final show-cause notice also an adjournment petition was moved by the son of the assessee, requesting for a minimum period of three more months. Rejecting the petition as the case was becoming time barred ex-parte assessment order u/s 144 was passed. The AO considering the fact that the assessee had deposited an amount of Rs.47,86,100/- with Bank of India and Rs.28,16,000/- with Vijaya Bank which remained unexplained added the same to the income of the assessee. Aggrieved by this, the assessee came in appeal before the First Appellate Authority. The fresh evidences relied upon in support of its claim were not accepted by the CIT(A) as the assessee had not appeared in the assessment proceedings.

3. Aggrieved by this, the assessee is in appeal before the Tribunal.

4. The Ld.AR relying upon the impugned order submitted that the fresh evidence sought to be moved consisted of gift receipt of Rs.21 lacs and Rs.25 lacs from the assessee's brothers, Sh. Narayan Mohan and from Sh. Surendra Mohan respectively. Rs. 17 lacs it was explained was on account of sale of a commercial office to Sh. Rajiv Kashyap which was subsequently cancelled. The evidence it was explained could not be filed during the assessment proceedings due to the illness of his mother-in-law living in Sultanpur (Uttar Pradesh about 650 K.M. from Delhi) and her treatment carried out in Delhi. The said explanation it was submitted has not been accepted.

4.1. Referring to the same, it was submitted that the evidence sought to be filed before the CIT(A) under Rule 29 was necessarily fresh evidence as it was not filed

before the AO. It was explained that the assessee not conversant with the tax proceedings in good faith had moved a petition requesting for three months time through her son and only on this ground the CIT(A) has refused to accept the fresh evidence. It was his submission that the opportunities provided by the AO due to the ignorance on the part of the assessee could not be properly used as the assessee was under a genuine belief that as soon as she is free from the medical conditions of her mother-in-law, she could explain it to the AO. Thus, it was his submission that it may appear that the assessee was careless but the fact is the assessee was completely ignorant about the time constraints on the AO and that the case was becoming time barred. The evidence relied upon not admitted by the CIT(A) it was submitted is relevant and crucial to determine the issue. Accordingly a prayer was made that it may be admitted.

5. The Ld. Sr. DR inviting attention to the assessment order submitted that more than sufficient opportunity has been provided by the AO. The order is passed on 29.12.2010 and as per the last petition of the assessee on 27.12.2010, the assessee had further requested for three more months disregarding the fact that the case was becoming time-barred. For ready-reference, the relevant portion from the assessment order is extracted hereunder:-

“.....Till date no submission has been received from the side of assessee except a letter was received on 27.12.2010 through speed post which was signed by Shantanu Shandilya, the son of the assessee and it was requested to provide minimum 3 months more time to prepare & submit the details if any.”

5.1. Accordingly reliance was placed upon the impugned order.

6. We have heard the rival submissions and perused the material available on record. Considering the submissions of the parties before the Bench, we find that

admittedly more than adequate opportunity has been given to the assessee by the AO. We also find that the assessee in the peculiar facts of the present case, pleading can be accepted that she was ignorant of the time constraints on the AO and was under a bonafide that she could offer explanation after three months. Having so concluded, we now deem it appropriate to address the evidences sought to be relied upon by the assessee. The fresh evidence which has been moved is as under:-

i. *“Rs.21 Lacs in cash from her brother Sh. Narayan Mohan on 22.05.2007. Following documentary evidence was filed in support of her contention -*

- *Copy of Memorandum of Gift executed between sh. Narayan Mohan and the appellant.*
- *Affidavit of Sh. Kameshwar Nath, father of the appellant.*
- *Copy of Regd. Will dated 03.04.1997 of Sh. Kamta Nath Khairu (Ojha), wherein he bequeathed agricultural lands at Village Kharar & Tulsipur to Sh. Narayan Mohan.*
- *Copy of the Death Certificate of Sh. Kamta Nath Khairu (Ojha).*
- *Copies of Khatonies of the agricumtural lands at Village Kharar, Tulsipur. etc.*

ii. *Rs.25 Lacs in cash from her brother Sh. Surendra Mohan on 22.01.2008. Following documentary evidence was filed in support of her contention -*

- *Copy of Agreement to Sell dated 21.01.2008 of shops / commercial properties at Nagpur by Sh. Surendra Mohan in favour of Sh. Rajeev Kashyap where advance of Rs. 25 Lacs were received.*
- *Copy of receipt of advance payment issued by Sh. Surendera Mohan to Sh. Rajeev Kashyap.*
- *Copies of the documents relating to the purchase of commercial properties / shops at Nagpur by Sh. Surendra Moha.*

iii. *Besides this an advance of Rs. 17 Lacs in cash on 27.02.2008 was shown from Sh. Rajiv Kashyap on account of sale of her commercial office bearing no. 101, Neel Kanth Chamber-2, LSC, Saini Enclave, Vikas Marg, Delhi. TYhis deal was shown as cancelled later on and the amount of advance was returned, the following documentary evidence was filed:-*

- *Agreement to sell dated 27.02.2008 entered into between the appellant and SH. Rajiv Kashyap.*
- *Copy of the receipt dated 27.02.2008 for Rs.17 Lacs issued by the appellant to SH. Rajiv Kashyap.*

- *Buyer Agreement dated 16.12.1996 relating to purchase of office No.101, Neel Kanth Chamber-2, LSC Saini Enclave, Vikash Marg, Delhi by the appellant.*
- *Cancellation Agreement dated 30.03.2008 executed by the appellant and Sh. Rajiv Kashyap.”*

7. On consideration of the above, we find that the evidence which the assessee seeks to place on record is relevant and crucial for determining the issues. In these afore-mentioned facts and circumstances, we deem it appropriate to admit the fresh evidences. Accordingly the parties were directed to address whether the issue may be sent to the AO or the CIT(A). The Ld. Sr. DR submitted that since the evidences are fresh evidence accordingly the veracity needs to be considered first by the AO. Accepting the submissions made, the impugned order is set aside and the issue is restored back to the file of the AO with the direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. The assessee is advised to ensure that complete and proper compliance is made before the AO and the opportunity so afforded in good faith is not abused as failing which the Assessing Officer would be at liberty to pass a speaking order in accordance with law.

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

The order is pronounced in the open court on 16th of May, 2016.

Sd/-

**(O.P.KANT)
ACCOUNTANT MEMBER**

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Dated: 16/05/2016
Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI