

CIT(A) does not have the power to enhance assessment by taking income not considered during assessment

Summary – The Delhi ITAT in a recent case of Hari Mohan Sharma, (the Assessee) held CIT(A) does not have the power to enhance assessment by taking income not considered during assessment

Facts

- The assessee disclosed capital gain on sale of a residential house property and claimed exemption/deduction under section 54F.
- The Assessing Officer treated the claim as invalid since two residential properties were sold by the assessee and the deduction under section 54F was available only if property other than a residential property is sold.
- The assessee filed an application for the deduction alternatively under section 54 which was denied as the claim was not through revised return.
- The Commissioner (Appeals) treated sales consideration as unexplained cash and made addition under section 68 since property was never sold and the source of money given by the purchaser to the assessee also could not be explained.
- On appeal, the assessee submitted objecting to the enhancement notice stating that the Commissioner (Appeals) is tackling a new source of income.

Held

- The ITAT held that in the instant case only issue considered and discussed by the Assessing Officer is with respect to claim of the assessee under section 54F and further claim alternatively under section 54 which were rejected. The issue of verification of capital gain was not the issue which was at all dealt with by the Assessing Officer.
- Therefore, the Commissioner (Appeals) could not have made enhancement on the issue holding that capital gain shown by the assessee itself was not in accordance with the law and given a finding that no capital gain had accrued to the assessee.
- The Commissioner (Appeals) has exceeded his jurisdiction by considering the new sources of income not at all considered by the Assessing Officer, consequently the ground of the appeal of the assessee is to be allowed and the matter set aside.