

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

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 1924/Del/2015  
(Assessment Year: 2007-08)**

Rakesh Kumar & Mukesh Kumar C/o CA, Vinod Rawal, 309, Vishal Tower, District Centre, Janakpuri, New Delhi. PAN No. APAPK6121K	vs	ITO Ward-2, Rewari
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant/Assessee by</b>	<b>None</b>
<b>Respondent/Revenue by</b>	<b>Ms. Meeta Singh, CIT DR</b>

<b>Date of Hearing</b>	<b>14.06.2018</b>
<b>Date of Pronouncement</b>	<b>15.06.2018</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 29.01.2015 passed by the Ld. CIT(Appeals)-Rohtak for AY 2007-08A.

2. The Grounds of appeal are as under:

1. *"The order of CIT (A) is bad in law and on facts.*
2. *The Ld. CIT (A) has erred in law and on facts in affirming the jurisdiction of the AO u/s147 without even perusing the reasons recorded as mentioned in the order of the assessment.*
3. *The Ld CIT (A) while affirming the jurisdiction of the AO u/s147 has failed to appreciate that no HUF, as has been assessed by the AO, was in existence.*
4. *The Ld CIT (A) has failed to appreciate that before assuming the jurisdiction of section 147 the AO has not obtained any sanction from the concerned authority as envisaged u/s 151 of the Act.*

5. *The Ld CIT (A) has not provided any purposeful and meaningful opportunity before dismissing the appeal of the assessee ex-parte.*
6. *The Ld. CIT (A) has further erred in dismissing the appeal of the assessee without providing proper opportunity of being heard.*
7. *The Ld. CIT (A) has erred in dismissing the appeal of the assessee without issuing any final show cause notice before dismissing the appeal ex parte.*
8. *The Ld. CIT (A) has further erred in confirming the addition of Rs 1,33,87,500/- in hands of a non existing entity on account of Long Term Capital Gain.*
9. *The assessee craves leave to add alter modify any grounds of appeal at the time of hearing.”*

3. On the basis of AIR information for F.Y. 2006-07 notice u/s 148 of the Income Tax Act, 1961 was issued on 21.03.2012 to the assessee after recording the reasons. Notice u/s 142(1) dated 05.07.2012 was issued but no reply was received from the assessee. Thereafter, on 23.08.2012, 23.11.2012 again the notices u/s 142(1) was issued. On 07.01.2013 again notice u/s 142(1) was issued along with questionnaire, thereby asking the assessee to file the return of income and furnish the copy of the sale deed, distance certificate from municipality's limit of Rewari Dharuhera and calculation of long term capital gain on the sale consideration to the extent of Rs. 1,33,87,500/- received during the financial year 2006-07 relevant to the A.Y. 2007-08 along with complete documents supporting his contentions/explanations. Fresh notice u/s 142(1) was issued on 19.02.2013. But assessee has not appeared and did not file any reply. Again Notice u/s 142(1) was issued and the same was affixed by the Inspector and Notice server at the last known address of the assessee fixing the case for 15.03.2013. The Assessment was completed u/s 144/148 of the Income Tax Act by making addition of Rs. 1,33,87,500/- as Long Term Capital Gain.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee for non-prosecution and has not given any finding on the merits of the case.

5. None appeared for the assessee during the hearing despite sending notice.
6. The Ld. DR relied upon the order of the Assessing Officer and order of the CIT(A).
7. We have heard the Ld. DR and perused the records. It is pertinent to note that the order of the CIT(A) is an ex-parte order without deciding the issue on merit. In the interest of justice, it will be an appropriate to given the assessee an opportunity to plead his/their case on merit before the CIT(A). The order of the CIT(A) is set aside and the matter is remanded back to the file of the CIT(A) to decide the appeal of the assessee on merit. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.
8. In result, appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the open court on 15.06.2018**

Sd/-  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**  
Dated: 15.06.2018  
\*Kavita Arora

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	14.6.18
Date on which the typed draft is placed before the dictating Member	14.6.18
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	15.6.18
Date on which the final order is uploaded on the website of ITAT	15.6.18
Date on which the file goes to the Bench Clerk	15.6.18
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	