

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

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER  
AND.  
SH. K. N. CHARY, JUDICIAL MEMBER**

ITA No.6492/Del/2016  
Assessment Year: 2012-13

Neeraj Malik SE-116, Shastri Nagar Ghaziabad PAN No. AINPM1019J	Vs.	ITO Ward – 1 (4) Ghaziabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Neeraj Malik, CA
Respondent by	Ms.Rakhi Bimal, Sr. DR.

Date of hearing:	11/11/2019
Date of Pronouncement:	14/11/2019

**ORDER**

**PER R.K PANDA, AM:**

This appeal filed by the assessee is directed against the order dated 28.09.2016 of the CIT(A), Ghaziabad relating to A.Y. 2012-13.

2. Although a number grounds have been raised by the assessee in the grounds of appeal, these all relate to the order of the CIT(A) in confirming the addition of Rs.1,39,47,250/- made by the AO.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 28.03.2013 declaring

total income of Rs.3,09,650/-. Despite service of notice the assessee did not appear before the AO due to which the AO completed the assessment u/s. 144 of the IT Act determining the total income of the assessee at Rs.14,256,900/-wherein he made addition of Rs.1,39,47,250/- u/s. 69 of the IT Act being unexplained investment in purchase of an immovable property. According to the AO the assessee alongwith three more persons had jointly purchased an immovable property for consideration of Rs.5,16,71,000/-.

3.1 Before CIT(A) the assessee filed certain additional evidences under Rule 46A of the IT Rule 1962. However, the Ld. CIT(A) did not admit those additional evidences filed before him and upheld the action of the AO in making the addition of Rs.1,39,47,250/-.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Ld. Counsel for the assessee at the outset submitted that due to illness of the sister of the assessee he was unable to appear before the AO and filing the requisite details for which the assessment was completed u/s. 144 of the IT Act. Although the assessee filed various evidences before the CIT(A) requesting him to admit the same as additional evidences under Rule 46 A of the IT Rules, however, the Ld. CIT(A) without considering the additional evidences filed before him sustained the addition made by the AO. He submitted that in the interest of justice the assessee should be given an opportunity to substantiate his case either before the AO or before the CIT(A) as the Bench deems proper.

6. The Ld. DR on the other hand heavily relied on the order of the CIT(A) and submitted that despite repeated opportunities granted by the AO the assessee never appeared before him for which he was constrained to pass the exparte order. No justifiable reasons were given before the CIT(A) for admission of the additional evidences. Therefore, the Ld. CIT(A) was fully justified in upholding the order of the AO and in not admitting the additional evidences filed before him.

7. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the assessee in the instant case has purchased an immovable property alongwith three more persons for a consideration of Rs.5,16,71,000/-. Since the assessee did not appear before the AO and filed the explanation regarding the source of such investment, the AO invoking the provisions of section 144 of the IT Act completed the assessment wherein he made addition of Rs.1,39,47,250/- as unexplained investment for purchase of the property. We find although the assessee filed cer?tain additional evidences, however, the Ld. CIT(A) did not admit the same on the ground that none of the conditions laid down in Rule 46 A are fulfilled in the case of the assessee. It is the submission of the Ld. Counsel for the assessee that due to the illness of the sister of the assessee he was disturbed and was not in a position to file the requisite details before the AO for which he moved an application under Rule 46 A before the CIT(A) to admit the additional evidence as he was prevented from sufficient causes in not filing of the details. It is also his submission that in the

interest of justice the assessee should be given an opportunity to substantiate his case before the lower authorities. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the AO with a direction to give one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the AO and file requisite details failing which the AO is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purpose.

8. In the result the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 14.11.2019.

Sd/-  
**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.K PANDA)**  
**ACCOUNTANT MEMBER**

\*Neha\*

Date:- 14.11.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	11.11.2019
Date on which the typed draft is placed before the dictating Member	11.11.2019
Date on which the approved draft comes to the Sr.PS/PS	14.11.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	14.11.2019
Date on which the fair order comes back to the Sr. PS/ PS	14.11.2019
Date on which the final order is uploaded on the website of ITAT	14.11.2019
Date on which the file goes to the Bench Clerk	14.11.2019
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	