

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" New Delhi

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.2728/Del/2019
निर्धारणवर्ष/Assessment Year:2010-11

Swati Mahajan 2354, 5 th Floor, Overseas Apartment, Sector-50, Noida, Uttar Pradesh.	बनाम Vs.	ITO Ward 3(4) Noida.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent
PAN No. AJXPM5544R		

निर्धारितकीओरसे /Assessee by	Shri Gaurav Bansal, CA Ms. Neha Gupta, Advocate
राजस्वकीओरसे /Revenue by	Shri Pradeep Singh Gautam, Sr. DR

आदेश /O R D E R

1. This appeal filed by the assessee against the impugned order dated 28.09.2018 passed by the Ld. CIT(Appeals)-1, Noida in relation to assessment year 2010-11 on the following grounds of appeal:

- 1. "The Ld. CIT(A) erred in law and on facts in passing an ex-parte order u/s 250 of the Act against the provisions of natural justice and without giving the assessee an opportunity of being heard. Thus, the order of the CIT(A) must be annulled.*
- 2. The Ld. CIT(A) erred in law and on fact in not admitting the appeal of the assessee by applying the provisions of section 294(4)(b) of the IT Act, 1961, while the assessee had duly*

submitted the details and evidence in Form 35 in respect of tax paid by the assessee as per returned income.

- 3. The Ld. CIT(A) erred in law and on facts in not considering the grounds of appeal taken by the assessee in appeal before him against the order of the AO.*
- 4. The Ld. CIT(A) erred in law and on facts in not appreciating that no notice u/s 148 was ever been served on the assessee and the AO had no jurisdiction over the assessee, thus, the order passed by the AO is liable to be quashed.*
- 5. The Ld. CIT(A) erred in law and on facts in not appreciating that the AO had wrongly stated that the assessee did not quote her PAN while buying the property and thus, the selection of the case for scrutiny u/s 148 on the basis of wrong information is invalid.*
- 6. The Ld. CIT(A) erred in law and on facts in not appreciating that the AO totally ignored the material available on record, while making addition, as the property was in joint name and addition was made in single name.*
- 7. The Ld. CIT(A) erred in law and on facts in not admitting the appeal of the assessee and confirming the addition made by the AO of Rs. 43,31,407/- u/s 69 of the Act as unexplained and investment in the property without giving the assessee an opportunity of being heard and appreciating that the whole assessment proceedings were invalid. Thus, the addition must be deleted.*
- 8. That the CIT(A) was not correct in law in serving the order by sending it through e-mail on 31.01.2019 which implies that the order has not been passed on the date specified on the order.*
- 9. The appellant craves leave to and permission of the Hon'ble ITAT to add to or alter any of the grounds of appeal at any time up to the final decision of the appeal."*

2. At the time of hearing, Ld. Counsel for the assessee stated that the Ld. First Appellate Authority has decided the issue in dispute against the assessee without providing sufficient opportunity. He requested that the issues involved in the present appeal may be set aside to the Ld. First Appellate Authority to decide the same as per law, after giving opportunity to the assessee. He has also filed a written submission before the Bench today i.e. on 26.11.2019 in which he is attached Form No. 35 filed before the Ld. First Appellate Authority along with the grounds raised by the assessee before the Ld. CIT(A) and acknowledgement of ITR for the year in dispute in which he shows that assessee has made the payment of admitted tax and assessee is having dues of refund amounting to Rs. 57,005/-. Mainly he requested that he will establish the case of assessee before the Ld. First Appellate Authority on the issues involved in the present appeal and requested for setting aside the issue to the Ld. First Appellate Authority.

3. Ld. DR has not raised any serious objection on the request of the Ld. Counsel for the assessee.

4. I have heard the both parties and perused the orders passed by the Revenue Authority especially the impugned order and find that the AO has completed the assessment u/s 144 read with Section 147 of the Act and the Ld. First Appellate Authority had decided the issue in dispute against the assessee *ex parte* without providing sufficient opportunity to

the assessee. I also find that in view of the written submission filed by the assessee in which the assessee has attached acknowledgment of ITR for the year 2010-11 in which the assessee has shown the refund of Rs. 57,005/- which needs examination by the Ld. First Appellate Authority as per law. Therefore, in the interest of justice and keeping in view of the facts and circumstances of the present case and the *ex parte* order of the Ld. CIT(A), I am directing the assessee through his Counsel to appear before the Ld. First Appellate Authority on 26.03.2020 and substantiate the issues involved in the appeals with documentary evidence. I am directing the Ld. CIT(A) to provide sufficient opportunity to the assessee for substantiating her claim and decide the issues in appeal as per law.

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

6. It is made clear that no notice shall be issued to the assessee for 26.03.2010 to appear before the Ld. CIT(A) because this order has been pronounced in the open court.

The order pronounced in the open court on 02.12.2019

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 2nd December, 2019
*Kavita Arora, Sr. PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi