

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH ALLAHABAD**

**[THROUGH VIRTUAL COURT]**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER AND  
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.105/ALLD/2020  
Assessment Year: 2014-15**

Mohd. Rizwan Khan, 927, Ghabahria Gorabarik, Sadar, Sultanpur 228001	vs.	Income Tax Officer, Sultanpur
TAN/PAN:ALQPK3471J		
(Appellant)		(Respondent)

Appellant by:	None (Application)
Respondent by:	Shri A.K. Singh, CIT (DR)
Date of hearing:	23.02.2021
Date of pronouncement:	24.02.2021

**ORDER**

**PER SHRI VIJAY PAL RAO, JUDICIAL MEMBER:**

This appeal by the assessee is directed against the order dated 30.07.2020 of Id. CIT(A), Lucknow for AY 2014-15. The assessee has raised the following grounds:

*“1.1 BECAUSE on the facts and in the circumstances of the case, the Id. "CIT(A)" was not justified in dismissing the appeal by passing ex-parte order dated 30.07.2020 and consequently the impugned order deserves to be set aside and the matter restored to the "CIT(A)" for passing order afresh, after affording due and effective opportunity of being heard to the "appellant".*

1.2 *BECAUSE non-compliance of notices of hearing fixed for 20.04.2020 and 22.06.2020 was caused due to prevailing pandemic situation on account of COVID-19 and as such in terms of Gazette Notification No. 2 of 2020 dated 31.03.2020, the "CIT(A)" should have adjourned the hearing to a subsequent date instead of dismissing the appeal by passing the ex-parte order dated 30.07.2020.*

*WITHOUT PREJUDICE TO THE AFORESAID*

2. *BECAUSE notice under section 143(2) dated 31.08.2015 issued through CASS methodology is no notice in the eyes of law, as the requisites of clause (ii) of subsection (2) of section 143 have not been satisfied and consequently the assessment order dated 28.12.2016 deserved to be held as null and void.*
3. *BECAUSE even in the ex-parte order, Ld. CIT(A) should have decided various grounds of appeal on merits on the basis of material and information available on assessment record as well in the Statement of Facts instead of dismissing the appeal in limini.*
4. *BECAUSE on the facts and in the circumstances of the case the authorities below were not correct either in law or on facts in making/upholding the additions aggregating Rs. 56,52,415 on protective basis.*
5. *BECAUSE on a due consideration of the fact that during the assessment proceedings the assessee had furnished/explained to the assessing officer the sources from which the payments had been made for purchase of immovable properties and had also furnished requisite evidences thereof, the authorities below were not justified in making/upholding the addition of Rs. 15,04,249/- by treating the same as unexplained investment.*
6. *BECAUSE without causing prejudice to the other grounds and without admitting any part of the addition of Rs. 15,04,249/- the payment of purchase consideration to the extent made in 2008-09 (out of total purchase consideration of Rs.15,04,249/-) could not have been validly added in the year under appeal i.e., in the AY 2014-15 and as such the CIT(A) ought to have deleted the addition at least to that extent.*
7. *BECAUSE the authorities below have erred in law and on facts in invoking the provisions of section 56(2)(vii)(b) and on that basis in making/upholding the addition of Rs. 41,48,166/- on account of*

*difference between the stamp value for stamp duty purpose and the actual purchase consideration paid by the assessee for purchasing the properties.*

- 8- *BECAUSE the enabling amendments in section 56(2)(vii)(b) were made effective from 01.04.2014 only, and as such the same were not attracted in the case in hand since the assessee had purchased all the purchases prior to 01.04.2014 and consequently the addition of Rs.41,48,166/- .made/upheld by invoking the provisions of section 56(2)(vii)(b)(ii) being illegal is liable to be deleted.*
9. *BECAUSE in any case, the addition of Rs.41,48,166/- made by the assessing officer and upheld by CIT(A) is not sustainable because valuation of the properties was not referred to the departmental valuation officer even though the assessee had disputed the adoption of stamp value and had made specific request for referring the valuation to the departmental valuation officer.*
10. *BECAUSE without prejudice to the other grounds of appeal, the assessment order passed under section 143(3) is bad in law as the assessing officer had issued notice u/s 144 dated 13.12.2016 against which the assessment ought to have been made u/s 144 only.*
11. *BECAUSE without prejudice to the other ground of appeal, the addition of Rs.15,040249 is not sustainable as the Ld A.O. had failed to mention the relevant section under which the said addition was made.*
12. *BECAUSE without prejudice to the grounds herein the Ld. CIT(A) was not correct in observing that in the grounds taken before him, the appellant had challenged the additions amounting to Rs. 15,04,249/- only.*
13. *BECAUSE the order appealed against is contrary to law, facts and principles of natural justice.*
14. *The appellant craves leave to add, amend, alter or vary from the above grounds of appeal at or before the time of hearing.”*

2. None appeared on behalf of the assessee. However, the assessee has filed written submission through his authorized Representative. We have carefully perused the written submissions filed by the assessee wherein the assessee has

pleaded that in Ground Nos. 1.1 and 1.2 the assessee has challenged the exparte order passed by the Id. CIT(A) during the peak of COVID-19, Pandemic crises. The assessee has also referred to the extra ordinary gazette notification by the Government of India and pointed out that the limitation for various compliance under the Income Tax Act and Wealth Tax Act etc. has been relaxed by the said gazette notification due to ongoing COVID-19, Pandemic. Thus, the assessee has pleaded that the assessee may be granted one more opportunity of hearing to present its case before the Id. CIT(A).

3. On the other hand, Id. DR has relied upon the orders of the authorities below.

4. Having considered the written submissions of the assessee, submission of Id. DR as well as perusal of the impugned order it is noted that the Id. CIT(A) has dismissed the appeal of the assessee by exparte order when nobody attended the hearing. It is noted that the impugned order has been passed by the Id. CIT(A) on 30.07.2020 in the midst of ongoing COVID-19, Pandemic. Further, the Assessing Officer made an addition of Rs.56,52,415/- on protective basis whereas the Id. CIT(A) has confirmed the said addition without even considering the status and outcome of the substantive addition made by the Assessing Officer. Therefore, without knowing the status of the substantive addition made by the Assessing Officer the protective addition cannot be decided conclusively. Further, in view of the facts and circumstances that the impugned order has been passed by the Id. CIT(A) due to non appearance of the assessee but the situation prevailing at that point of time when the hearing were fixed by the Id. CIT(A) was certainly inordinate situation of COVID-19, Pandemic and therefore, the assessee deserves one more opportunity of hearing to present his case. Accordingly, in the facts and circumstances of the case, when the Id. CIT(A) has passed the impugned order without even considering the fate of substantive addition and the assessee has already explained the sufficient reason for not attending the proceeding before the Id. CIT(A) the impugned order of the Id. CIT(A) is set aside and matter is remanded

to the record of the Id. CIT(A) for deciding the same afresh after giving one more opportunity of hearing to the assessee. Needless to say that the protective addition is dependent on the outcome of the case where the substantive addition was made by the Assessing Officer.

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

**(Order pronounced on 24/02/2021 at Allahabad in the open Court through Video Conferencing)**

Sd/-  
[RAMIT KOCHAR]  
ACCOUNTANT MEMBER

Sd/-  
[VIJAY PAL RAO]  
JUDICIAL MEMBER

Dated: 24/02/2021

Aks/-

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT(A) -
4. CIT
5. DR -