

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC-2' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.739/Del/2020
Assessment Year: 2016-17

Sh. Vinay Arora, 326, Bhera Enclave, New Delhi	Vs.	ITO, Ward-44(7), New Delhi
PAN :AFOPA3108G		
(Appellant)		(Respondent)

Appellant by	Sh. Angad Pal, CA
Respondent by	Sh. R.K. Gupta, Sr.DR

Date of hearing	01.07.2021
Date of pronouncement	01.07.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 31/12/2019 passed by the learned Commissioner of Income Tax (Appeals)-43, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2016-17 raising following grounds:

1. *On the facts and circumstances of the case, the order passed by the Learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad in law and on facts.*
2. *The learned CIT(A) has erred on facts, by dismissing the appeal on grounds of non-compliance without considering the response*

electronically filed by the assessee on 30.10.2019 with all the supporting documents through ITBA application available in the income tax e-filing portal vide Document ID 100000032345823 against the notice no. ITBA/APL/S/APL_1/2019-20/1019011249(1) for hearing u/s 250 served on 17.10.2019 by learned CIT(A) via the same portal. (Total Tax Effect Rs. 43,75,995).

3. *The learned CIT(A) has erred on law by not considering the merits of the grounds of appeal filed supported by documents available in the records of the learned AO as well as filed with the learned CIT(A).*
4. *Learned CIT(A) has erred in allowing the addition made by learned AO on account of capital gain of Rs. 79,41,284 on sale of property located I-888, Palam Vihar without allowing the deduction under section 54F on account of new residential property located A-1/12, Roof Terrace of Second Floor, Paschim Vihar, purchased by the appellant in the same financial year for a consideration amounting to Rs. 1,06,80,000, whose sale deed has been provided by the appellant and is available in the records of the learned AO as well as filed with the learned CIT(A). (Standalone Tax Effect Rs. 21,35,144).*
5. *Learned CIT(A) has erred in allowing the addition made by learned AO on account of capital gain of Rs. 18,54,606 on sale of property located 431, Bhera Enclave without allowing the stamp duty of Rs. 60,000 paid by the appellant to acquire the property which is mentioned apparently on the deed provided by the appellant and is available in the records of the learned AO as well as filed with the learned CIT(A). (Standalone Tax Effect Rs. 12,046)*
6. *The learned CIT(A) has erred in allowing the addition made by learned AO of Rs. 69,47,800 as unexplained investments on the basis of incorrect information of purchase of property located A-1/12, First Floor, Paschim Vihar for Rs. 1,21,75,000 whereas the deed in possession of the learned AO and also filed with CIT(A) clearly mentions the names of other persons as buyers. (Standalone Tax Effect Rs. 23,95,495)*
7. *The learned CIT(A) has erred in allowing the addition made by learned AO on account of deemed rent on the property that has been purchased during the financial year itself without allowing vacancy allowance under section 23(1)(c) considering the fact that it takes time to make a newly purchased property ready for letting out and to find a tenant. (Standalone Tax Effect Rs. 75,213)."*

2. At the outset, the Learned Counsel of the assessee referred to para-5 of the order of the Ld. CIT(A) and submitted that only two notices i.e. notice dated 15/10/2019 and 30/10/2019 were sent to the assessee, which were also not served. He further submitted that the Ld. CIT(A) has claimed to have sent final hearing notice on 30/12/2019, whereas the impugned order has been passed on 31/12/2019 and, therefore, no sufficient opportunity has been provided by the Learned CIT(A), which is against the principle of natural justice. He submitted that the assessee is willing to appear before the Ld. CIT(A) and thus matter may be restored back to the file of the Learned CIT(A) for deciding afresh.

5. The Learned DR though relied on the order of the lower authorities, however, did not object for restoring the matter back to the Learned CIT(A).

6. We have heard rival submission of the parties on the issue in dispute. The Learned First Appellate Authority i.e. Ld CIT(A) has passed this order in view of non-compliance of the notices sent by him by email as well as by speed post. The Learned Counsel of the assessee, however, has contended before us that notices were not received by the assessee and the final notice was sent only on 30/12/2019 and impugned order has been passed on 31/12/2019. For adjudication of matter, the explanation of assessee need to be considered by Ld. CIT(A). Before us, the Learned Counsel of the assessee has expressed willingness of the assessee to appear before the Learned First Appellate Authority. In view of the above facts and circumstances and in the interest

of substantial justice, we set aside the order of the Ld. CIT(A) and restore the matter back to him for deciding afresh after providing adequate opportunity of being heard to both the assessee as well as the Assessing Officer. The grounds of the appeal raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open court on 1st July, 2021.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 1st July, 2021.

RK/-^(DTDC)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi