

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.5870/Del/2019
Assessment Year : 2009-10**

Smt. Kiranwati, W/o-Sh. Rajbeer Nagar, Vill-Nawada, Near Dankor, Tahsil Sadar Gr. Noida, G.B. Nagar-201001	vs	Income Tax Officer, Ward-2(1), A2D, Sector-24, Noida
PAN-EUUPK1814G		
APPELLANT		RESPONDENT

Appellant by	Sh. Raghuraj Singh, Adv.
Respondent by	Sh. Gaurav Pundir, Sr. DR
Date of Hearing	24.08.2021
Date of Pronouncement	11.10.2021

ORDER

PER KUL BHARAT, JM :

This appeal by the assessee is directed against the order of Ld. CIT(A)-I, Noida dated 31.12.2018 pertaining to assessment year 2009-10. The assessee has raised following grounds of appeal:-

1. *That the impugned Assessment order passed by the Hon'ble CIT (A) is bad in law, wrong on facts and*

against the Principal of natural justices hence is unsustainable.

2. That the impugned Assessment order passed by the Hon'ble CIT (A) is wrong, having no base and against the circumstance of the case.

3. That on facts and circumstances of the case and in Law, the assessing officer had erred in assessing the income tax of the appellant at Rs. 10,21,510, please be deleted.

4. That the Ld. Assessing Officer had erred on facts and circumstances of the case and in law in making an addition on account of cash Deposit by the Assessee of Rs. 14,00,000.00, being wholly based on conjecture and surmises and being untrue, the same must be deleted.

5. The addition made by the A.O. is devoid of any merits and is away from the factual matrix. The Submission is not made by the Assessee. The Cash received against earlier sold agriculture land by Assessee's Husband of Rs 19 Lac dt 30/01/2009. The Assessee's husband does not maintain any Bank account and the same sale consideration received in cash mode which was deposited in Assessee account. Therefore, there cannot be any tax liability and the said cash deposited explained as u/s 68 of Income tax- act 1961.

6. That the impugned assessment order is arbitrary, illegal, bad in law in violation of rudimentary principal of contemporary jurisprudence.

7. That the provisions of section 271(1) (C) is not justify the case of the applicant.

8. That the impugned Assessment order passed by Ld. Assessing Officer, Noida is a clear cut case of misunderstanding and wrong interpretation of Law.

2. It is the second round of litigation. In the earlier round, the Tribunal was pleased to set-aside the grounds to the Ld. CIT(A)

to decide afresh, however, the Ld. CIT(A) again dismissed the appeal on the technical ground by observing as under:-

“103. However, in the instant case, the appeal of the appellant cannot be admitted because of non-compliance of the mandatory provisions of Section 249(4)(a) of I.T. Act, 1961 and for further non-compliance of the provisions of Section 249(4)(b) of I.T. Act, 1961 and therefore the issue regarding merits of the case or non-compliance of the mandatory procedure by Ld.AO also cannot be considered in the present appeal as legally speaking there is a case of non appeal before this office.”

3. The Ld. Counsel for the assessee vehemently opposed the findings of the Ld. CIT(A) and submitted that the Ld. CIT(A) has written thesis but ignored the details to adjudicate the issue on merit. He submitted that the issue is with regard to the deposit of cash in the account of the assessee amounting to Rs.14 lakhs. He submitted that the explanation of the assessee before the lower authorities was that the assessee's husband sold agricultural land on 30.01.2009 of Rs.19 Lakhs. Since, her husband did not maintain any bank account; the sale consideration received in cash was deposited in assessee's bank account. The assessee was neither owner of the sale consideration nor such amount was from any undisclosed sources. He contended that the assessee being an illiterate

lady was not conversant to the tax laws. The Ld. Counsel for the assessee pointed out that the Assessing Officer made addition by observing that *the assessee has again failed to make any compliance after sufficient opportunity was provided to the assessee by the Department. As the matter being time baring, now there is no other option but to complete assessment ex-parte u/s 144/147 of I.T. Act, 1961, on the basis of facts available on record.*” Hence, the Assessing Officer proceeded ex-parte against the assessee. He submitted that the Ld. CIT(A) dismissed the appeal purely relying on the provisions of section 249(4)(a) of the I.T. Act and for further non-compliance of the provisions of section 249(4)(b) of the I.T. Act. It was further contended that the assessment order is *ex-facie* illegal and bad in law as the Ld. CIT(A) himself had recorded in the impugned order that the Assessing Officer failed to assumed proper jurisdiction as no notice u/s 143(2) was issued and served upon the assessee. He contended that the assessment order ought to have been quashed on this ground also.

4. Per contra, the Ld. DR opposed the submissions of the assessee and supported the order of the Ld. CIT(A).

5. I have heard the rival contention and perused the records. We find that the Ld. CIT(A) has given finding on facts in para 8 as under:-

“8. However, it appears that the Ld. Assessing Officer has also not assumed jurisdiction u/s 143(2) of I.T. Act, 1961 before proceeding to frame the impugned assessment order and which is mandatory under the law and as per the law laid down by the jurisdictional High Court being the Hon’ble High Court of Judicature at Allahabad. The appellant has waived his rights for getting notice u/s 143(2) of I.T. Act, 1961 and has not pleaded that the appeal of the appellant be decided qua merits of the case ignoring the issue of non-compliance of due procedure by the Ld. A.O. to frame the impugned assessment. However, this issue of non-assumption of due jurisdiction by the Ld. A.O. can be considered & decided only in an admitted appeal & the issue of admission of an appeal needs to be decided by this office before taking up & considering the issue of non-issuance of notice u/s 143(2) of I.T. Act, 1961 and the correctness or otherwise of the impugned assessment order is to be adjudicated by this office qua the maintainability of the appeal & the merits of the case.”

6. The Revenue has not rebutted the finding that no notice u/s 143(2) was issued. I have also gone through the assessment order. The Assessing Officer has simply stated that the notice u/s 148 of the Act was issued on 23.03.2016 after recording the reasons placed on record, consequently; notice u/s 142(1) was issued on 21.07.2016. From the assessment order, it is clear that no notice u/s 143(2) was issued which is

mandatory condition for framing the assessment u/s 147 of the Act. Therefore, the assessment was framed is without authority of law. I, therefore, hold that the assessment is bad in law and the same is hereby quashed. As I have quashed the assessment order on the ground that no notice u/s 143(2) was issued, the other grounds on merit have become of academic in nature, hence not adjudicated.

7. In the result, the appeal of the assessee is allowed.

Order was pronounced in the open court on 11.10.2021.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Shekhar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI