

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KUL BHARAT, JUDICIAL MEMBER**

ITA No.2075/Del/2019
(Assessment Year : 2010-11)

Shashi Sarna D-81, GF Ramprastha Ghaziabad, UP-201 001 PAN : CQNPS 7045 E (APPELLANT)	Vs.	ITO Ward – 2(2)(3) Ghaziabad (RESPONDENT)
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CO No.119/Del/2019
(Assessment Year : 2010-11)

ITO Ward – 2(2)(3) Ghaziabad PAN : CQNPS 7045 E (APPELLANT)	Vs.	Shashi Sarna D-81, GF Ramprastha Ghaziabad, UP-201 001 (RESPONDENT)
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Assessee by	--None--
Revenue by	Shri Umesh Takyar, Sr. D.R.

Date of hearing:	26.04.2022
Date of Pronouncement:	26.04.2022

ORDER**PER ANIL CHATURVEDI, AM :**

This appeal filed by the assessee along with the Cross Objection by Revenue is directed against the order dated 28.09.2018 of the Commissioner of Income Tax (Appeals)-I, Noida relating to Assessment Year 2010-11.

2. Before us, at the outset, Learned DR submitted that the issue raised in the appeal of the assessee and CO of the Revenue are interconnected.

3. Brief facts of the case as culled out from the material on record are as under:-

4. Assessee is an individual who had filed income tax return for A.Y. 2010-11 on 08.05.2017 declaring income of Rs.1,75,644/-. Notices u/s 143(2) & 142(1) of the Act were issued to the assessee and the case was selected for scrutiny and thereafter assessment was framed u/s 147/143(3) of the Act vide order dated 27.09.2017 and the total income was determined at Rs.50,15,102/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 28.09.2018 in Appeal No.424/e-file/2017-18/Noida dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

1. *“On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case the order passed by the learned CIT(A) is bad in law having been passed ex parte without giving the assessee an appropriate and adequate opportunity of being heard in clear violation of the principles of natural justice.*
3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that the reopening by the AO and consequent reassessment without complying with the statutory conditions prescribed under Section 147 read with Section 148 of the Act is bad in law.*
4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO ignoring the fact that the AO has erred both on facts and in law in making reassessment under Section 147 without recording the reasons for reopening the assessment does not meet the requirements of Section 147 of the Act.*
5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order passed by the AO that the reopening is bad in law as the same has been made on the basis of material collected at the back of the assessee without giving assessee an opportunity to rebut the same in violation of provisions of the Act.*
6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 48,39,458/- made by the AO treating the gift of property to the daughter by the assessee as transfer of property chargeable to tax under the head Long Term Capital Gain adopting value computed under section 50C of the Income Tax Act.*
7. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that the alleged transaction*

cannot be treated as transfer in view of the specific provisions of section 47(iii) of the Income Tax Act.

(ii) That the addition has been confirmed arbitrarily ignoring the documents and explanation submitted by the assessee in this regard.

8. *That the appellant craves leave to add, amend or alter any of the grounds of the appeal.”*

5. The Revenue in its CO has raised the following grounds:

1. *Ld CIT(A)-1, Noida has passed order dated 28.09.2018 beyond his jurisdiction as the jurisdiction over appeal of the assessee was with Ld. CIT(A), Ghaziabad. Copies of CBDT's notification no. 66/2014 dated 13.11.2014 r.w. order no. G-03/2014-15 dated 15 11 2014 of Ld. Pr. CCIT (CCA), Kanpur, assigning jurisdiction to CIT(A), Ghaziabad and other CslT(A) of UP (West & Uttrakhand) are enclosed.*
2. *The Ld. CIT(A)-1, Noida has erred in law as well as on facts in not appreciating the fact that the appeal of the assessee should have been transferred to the jurisdictional CIT(A), Ghaziabad for adjudication.*
3. *Therefore, the order dated 28.09.2018 of the CIT(A)-1, Noida, being a nullity in the eyes of law, may be set aside for fresh adjudication to the jurisdictional Ld. CIT(A), Ghaziabad.'*
4. *The respondent craves leave to modify any of the grounds above and/or to add any fresh ground or grounds as and when it is required to do so.”*

6. On the date of hearing, none appeared on behalf of the assessee nor any adjournment application was filed on its behalf though the case file reveals that the notice of hearing was served on the assessee. In such a situation, we proceed to dispose of the

appeals *ex parte qua* the assessee and after hearing the Learned DR.

7. Before us, Learned DR fairly submitted that CIT(A) has not disposed of the appeal of the assessee on merits but however submitted that since there was no appearance by assessee before CIT(A), CIT(A) has rightly dismissed the appeal of the assessee. He thus supported the order of CIT(A).

8. We have heard the rival submissions and perused the material available on record. The perusal of CIT(A) order reveals that CIT(A) has passed an *ex parte* order without deciding the issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by dismissing the appeals without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no party should be condemned unheard. In view of these facts, we set aside the impugned order of CIT(A) dated 28.09.2018 and restore the issue to the file of CIT(A) for re-adjudication of the issue after granting sufficient opportunity of hearing to both the parties. Assessee is also directed to promptly furnish the details called for by the authorities. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the grounds

raised by the assessee and the grounds raised by Revenue in their CO. **Thus the ground of assessee and Revenue are allowed for statistical purposes.**

9. In the combined result, the appeal of assessee and CO of the Revenue are allowed for statistical purposes.

Order pronounced in the open court on 26.04.2022

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 26.04.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI