

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

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA No. 120/Del/2022
(Assessment Year : 2018-19)

Shiv Kumar Sharma House No.A338, Prahlad Garhi Vasundharam, Near Mayur Public School, Ghaziabad, UP-201 012 PAN No. CCUPS 8648 J (APPELLANT)	Vs.	Ward 2(2)(3) Ghaziabad (RESPONDENT)
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Assessee by	Shri Rakesh Kumar Garg, Adv. Shri Ankit Garg, Adv.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	11.04.2022
Date of Pronouncement:	10.05.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 24.12.2021 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) - Delhi relating to Assessment Year 2018-19.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is an individual who electronically filed his return of income for AY. 2018-19 on 22.01.2019 declaring total income at Rs.14,81,410/-. Thereafter, vide intimation u/s 143(1) dated 15.04.2019, the return income of the assessee was accepted and the refund due to the assessee was determined at Rs.80,647/- as against the claim of Rs.3,09,590/-. Thereafter, assessee filed appeal before CIT(A) who vide order dated 24.12.2021 in Appeal No.CIT(A), Ghaziabad/10416/2019-20 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds:

1. *“The learned CIT (A) has erred in law and on merits of case was not justified in upholding taxable income of Rs.14,81,867/- in place of Rs.10,56,531/- worked out on the basis of compensation so reduced from Rs. 40,09,235/ to Rs. 28,56,617/-. This is very harsh on the assessee that on one hand the benefit of TDS of Rs. 2,30,518/- was reduced without correcting the taxable income worked out on such reduced compensation. This is against the provisions of law and principle of natural justice.*
2. *Assessee could not get proper opportunity of being heard to adduce evidences in the unique circumstances of the case, hence order is against the provisions of law and natural justice.*
3. *It is the law of land that ITAT is the authority which can look into reduction of income even without revising the return as held by Apex Court in the case of Goetz India Ltd. It was open to the assessee to raise the points of law even before the appellate tribunal. It comes within the power of Tribunal u/s 254 of the Income Tax Act 1961 to entertain the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal.”*

4. At the outset, ld AR submitted that though the assessee has raised various grounds but the sole controversy is with respect to addition of income amounting to Rs. 40,09,235/-

5. Before me, Learned AR submitted that assessee is an agriculturist and during the year under consideration compensation of Rs.40,09,235/- was stated to have been received on the acquisition of his agriculture land from U.P. Awas Vikas Parishad Ghaziabad as per Form 26AS dated 30.07.2018. Based on the compensation reflected in Form 26AS, assessee filed return of income on 22.01.2019 declaring the total taxable income at Rs.14,81,410/- (which included the compensation of Rs 40,09,235/-). Subsequently, the compensation to the assessee was revised by U.P. Awas Vikas Parishad *suo moto* to Rs.11,52,618/- instead of Rs 40,09,235/- and the corresponding TDS was also reduced to Rs.2,30,518/- from Rs. 5,81,641/-. Ld AR submitted that the reduction of compensation was for the reason that the original compensation included the compensation belonging to the cousin of assessee, Mr. Mahaveer Prasad Sharma. The revised compensation and the corresponding TDS was reflected in the revised Form 26AS dated 1.7.2019 (the copy of which is placed at page 9 of the paper book). He submitted that on the basis of the revised Form 26AS, the total income of the assessee worked out to Rs. 10,56,531/- instead of Rs.14,81,410/-, but however in the intimation passed u/s 143(1)(a) of the Act, the total income of the assessee was considered as Rs.14,81,967/- instead of revised total income amounting to Rs.10,56,531/-. He submitted that assessee had filed his original return of income by considering the amount of compensation as per the original Form 26AS dated 30.07.2018 and by the time the revised Form 26AS which was updated on 1st

July 2019, was received by the assessee, the time for filing the revised return had expired (the last date for filing the revised return of income was 31.03.2019). He submitted that before CIT(A), assessee pleaded that on the basis of the revised Form 26AS the total taxable income be considered but the plea of the assessee was rejected by CIT(A). He thereafter pointed to the original computation of taxable income which is placed at Page 4 of the paper book and pointed out that assessee had claimed TDS of Rs. 5,81,641/- being the TDS deducted u/s 194LA of the compensation received but however Revenue has granted credit for TDS to the extent of Rs. 3,51,123/-, being the TDS reflected in revised Form 26AS i.e. updated on 1st July 2019. Ld AR thereafter submitted that various Courts have held that even though if higher income has been declared by the assessee, the Revenue can recover the tax only on the correct income. He therefore submitted that the assessee be taxed only on the portion of the compensation that is due to the assessee as per revised Form 26AS. He therefore submitted that the Revenue be directed accordingly.

6. Learned DR on the other hand did not controvert the submissions made by Learned AR but however supported the order of CIT(A).

7. I have heard the rival submissions and perused the material available on record. The perusal of the original Form 26AS issued by the Department, wherein the data is stated to have been

updated till 30th July 2018, reflects the compensation received by the assessee from U.P. Awas Vikas Parishad Ghaziabad at Rs.40,09,235/- and the corresponding TDS at Rs.5,81,641/-. The Income Tax computations filed by the assessee which is placed at Page 4 of the paper book reflects amount offered to tax at Rs.40,09,235/- being the compensation as reflected as per original Form 26AS dated 30th July 2018. Thereafter a revised Form 26AS, (wherein the data has been updated till 1st July 2019) is placed at page 9 of the paper book and it reflects the total amount of compensation to the assessee from U.P. Awas Vikas Parishad at Rs.28,56,647/- and the corresponding TDS at Rs. 3,51,123/-. The revised Form 26AS was stated to have been received by the assessee in July, 2019 by which time the due date for filing the revised return of income for A.Y. 2018-19 u/s 139(4) of the Act had expired (the last date for filing the revised return of income being 31.03.2019). It is a settled law that no tax shall be levied or collected except by authority of law. Courts have held that there is duty cast upon the Assessing Officer to compute the correct rate of tax to be collected under the correct head. Anything which is unauthorisedly levied and collected will be illegal and without sanction of law. Here it will be relevant to refer to the decision of Hon'ble Kerala High Court in the case of **Raghavan Nair Vs ACIT [2018] 402 ITR 400 (Ker)** wherein the Hon'ble Court has observed as under :

10. *"The short question arising for consideration, therefore, is whether in the absence of a revised return, the Assessing Officer is precluded from considering, in a proceedings under section 143 of the Act, the contention of the assessee that the capital gains*

disclosed in the return filed by him is not exigible to tax and that therefore, there cannot be any assessment on the basis that the deduction claimed by him under that head is not admissible.

11. *It is beyond dispute that the powers of the Assessing Officers under the Act are quasijudicial in nature and they are duty-bound, therefore, to act fairly in the discharge of their functions. They are also invested with the authority to do justice to the assesseees. True, in a given case where the self- assessment made by an assessee is proposed to be revised on the ground that the deduction made by him in the return under a particular head is inadmissible, the Assessing Officer, in the absence of a revised return, would proceed on the basis of the facts disclosed by the assessee in the return. But, in a case where it is apparent on the face of the record that the assessee has included in his return, an income which is exempted from payment of Income-tax, on account of ignorance or by mistake, according to me, the Assessing Officer is bound to take into account the said fact in a proceeding under section 143 of the Act. In other words, if the capital gains on a transaction is exempted from payment of tax, the Assessing Officer has a duty to refrain from levying tax on the said capital gains and the Assessing Officer cannot, in such cases, refuse to grant relief under section 143 of the Act to the assessee on the technical plea that the assessee has not filed a revised return. It is so since the paramount duty of the Assessing Officer is to complete the assessments in accordance with law. It is all the more so in the light of the mandate under article 265 of the Constitution that no tax shall be levied or collected except by authority of law.”*

8. Varous courts have held that it is the obligation of the Revenue to tax an assessee on the income chargeable to tax under the Act and if higher income is offered to tax, then it is the duty of the Revenue to compute the correct income and grant the refund of taxes erroneously paid by an assessee.

9. Before me, Revenue has not placed any material on record to demonstrate that assessee has been issued any subsequent Form

26AS after 1st July 2019 wherein the compensation of Rs.28,56,647/- has been revised upwards by the Revenue. In such circumstances and in view of the foregoing I find merit in the submissions of the Ld AR. I therefore restore the issue back to the file of CIT(A) and direct him to compute correct income and tax in accordance with law after considering the submissions of the assessee and the documents furnished by the assessee. Needless to state that the CIT(A) shall grant adequate opportunity of hearing to both the sides. **Thus the ground of assessee is allowed for statistical purposes.**

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

Order pronounced in the open court on 10.05.2022

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Date:- 10.05.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI