

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 846/DEL/2021**  
**[Assessment Year: 2009-10]**

Sh. Chaturbhoj, C/o Sanjeev Anand & Associates, 136, Navyug Market, Ghaziabad-201001 PAN- BEQPC8131M	<u>Vs</u>	Income-tax Officer, Ward-1(2), Ghaziabad
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	None	
<b>Respondent by</b>	Sh. Om Prakash, Sr. DR	
<b>Date of hearing</b>	23.05.2022	
<b>Date of pronouncement</b>	25.05.2022	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-Ghaziabad, dated 26.08.2009, pertaining to the assessment year 2009-10. The assessee has raised following grounds of appeal:

- “1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order u/s 147/144 and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.
2. That in any case and in any view of the matter, action of Ld. CIT(A) in

*confirming the action of Ld. AO in framing the impugned reassessment order u/s 147/144, is bad in law and against the facts and circumstances of the case.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in dismissing the appeal as non-est being defective for mentioning wrong assessment year in Form 35 by recording incorrect facts and findings and without observing the principles of natural justice when assessment year was wrongly mentioned in assessment order by Ld. AO and assessment proceedings relates to A.Y. 2009-2010 and reasons were also recorded for A.Y. 2009-10.*

4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the addition of Rs. 27,82,052/- as long term capital gain, is bad in law and against the facts and circumstances of the case when the agricultural land sold was not a capital asset within meaning of section 2(14) of the I. T. Act, 1961.*

5. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

2. No one attended the proceedings and the appeal was called for hearing. It is seen that on the last date of hearing also no one attended the proceedings. Therefore, the appeal of the assessee is taken up for hearing in the absence of the assessee and is decided on the basis of the material available on record.

3. Learned Sr. DR submitted that the appeal was dismissed on the ground that the assessment year was wrongly mentioned. However, he fairly conceded the fact that in the impugned assessment order the assessment year mentioned is “2008-09”, however appeal pertains to assessment year 2009-10. Therefore, he submitted

that there was a mistake in the assessment order in mentioning therein the assessment year.

4. I have heard learned DR, perused the material on record. I find that the learned CIT(Appeals) dismissed the appeal by observing as under:

*“2. The appellant filed the appeal on 15.09.2018 which is found to be defective as the assessment year mentioned in Form -35 is not as per order against which appeal is preferred by appellant. Accordingly, a notice for explaining the defect was sent to the appellant on 22.07.2019 at the address given in Form -35 for the communication through the speed post. The appellant neither attended the appellate proceedings nor furnished any submissions.*

*2.1 The defect of wrong mentioning of assessment year is a non curable defect. Moreover, the appellant has not given detailed explanation at the points 8 and 9 of Taxes paid mentioned in Form -35 furnished by the appellant. The appeal suffers non curable defect. Considering above facts and circumstances, this appeal preferred by the appellant is treated as non-est being defective.*

*3. In the result, the appeal is dismissed in limine.”*

5. It is evident from the finding of the learned CIT(Appeals) that the appeal was dismissed on account of wrongly mentioning the assessment order as 2008-09. However, looking to the fact that even in the impugned assessment order, the assessment year was wrongly mentioned as “2008-09”, therefore, looking to the totality of facts it would sub serve the interest of justice if the impugned order is set aside and the assessment is restored to the file of Assessing officer for making necessary rectification in the assessment order. The assessee would be at liberty to

represent his case before the assessing authority. The grounds of appeal are allowed for statistical purpose.

6. Assessee's appeal is allowed for statistical purposes.

Order pronounced in open court on 25<sup>th</sup> May, 2022.

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

**\*MP\***

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**