

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. T. S. KAPOOR, ACCOUNTANT MEMBER**

**AND**

**SH. C. M. GARG, JUDICIAL MEMBER**

**ITA No. 3282/Del/2017 : Asstt. Year : 2007-08**

**ITA No. 3283/Del/2017 : Asstt. Year : 2008-09**

Sh. Sanjeev Kumar Khatri 501/7, Close North Nirvana Country, Gurgaon PAN : AKNPK5470F	Vs	ITO Ward-II(4) Faridabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AHFPK5915J</b>		

**ITA No. 445/Del/2019 : Asstt. Year : 2008-09**

Sh. Sanjeev Kumar Khatri 501/7, Close North Nirvana Country, Gurgaon PAN : AKNPK5470F	Vs	ITO Ward-II(3) Faridabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AHFPK5915J</b>		

**Assessee by : Sh. Rakesh Gupta, Adv. & Sh. Somil  
Agarwal, Adv.**

**Revenue by : Sh. H.K.Choudhary, CIT-DR,  
Sh. Abhishek Kumar, Sr. DR**

<b>Date of Hearing: 29.06.2022</b>	<b>Date of Pronouncement: 30 .06.2022</b>
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**ORDER**

**Per T.S.KAPOOR, AM**

The appeals in ITA no. 3282/Del/2017 and 3283/Del/2017 are against the common order of Ld. CIT(A) dated 30.05.2016

wherein the Ld. CIT(A) has upheld the order of Assessing Officer making certain additions, whereas appeal in ITA No. 445/Del/2019 is against the order of Ld. CIT(A) dated 28.12.2018 wherein he has upheld the penalty imposed on assessee u/s 271(1)(c) of the Act.

2. The Ld. AR, at the outset, invited our attention to the fact that assessment in these cases was completed after reopening of the cases u/s 148 of the Act and the notices for reopening u/s 148 were issued on the address which did not belong to the assessee and in this respect our attention was invited to paper book page no. 1 wherein copy of notice u/s 148 dated 13.03.2014 was placed and our specific attention was invited to the address on the notice which related to Faridabad. The Ld. AR submitted that the address of the assessee as per the latest return filed by assessee on dated 30.12.2013 was in the area of Tuglakabad, Delhi and in this respect our attention was invited to paper book page no. 7 wherein the copy of acknowledgement of return of income for assessment year 2013-14 was placed. The Ld. AR submitted that at the time of recording reasons and at the time of issuing notice u/s 148 the last known address was in the knowledge of the Assessing Officer as he had filed the return on 30.12.2013. Further our attention was invited to the copy of PAN Data relating to the assessee wherein again the address mentioned was the same which has been mentioned in the return of income therefore, in view of this fact that the notice u/s 148 was issued on wrong address, the Ld. AR argued that such notice cannot be set to have been even issued much less said that it was served. Therefore, it was stated that the assessee had taken additional grounds of appeal in both years and our attention was invited to the petition

dated 08.04.2022 wherein the prayer for admission of additional grounds was placed. The Ld. AR read out the additional grounds of appeal and submitted that since these additional grounds are legal in nature and are coming out from the material already existing on the record, therefore, the same may be admitted and adjudicated first.

3. The Ld. AR submitted that since the notices u/s 148 were addressed at the wrong address which admittedly did not belong to the assessee, therefore the assessment orders passed by Assessing Officer are null and void and needs to be annulled.

4. The ld. CIT-DR on the other hand objected to the admission of additional grounds and submitted that the additional grounds taken by the assessee are not legal in nature but requires the factual findings as to how the address mentioned on the notices u/s 148 did not relate to the assessee. It was submitted that only after detailed arguments and detailed findings from the records of the department it can be concluded as to whether the notices were issued on the wrong address or not and since these facts are not on record, therefore, the additional grounds taken by assessee should not be admitted.

5. The ld. AR submitted that the assessments in these cases has been made by Assessing officer u/s 144 of the Act and before Ld. CIT(A) also nobody had appeared in view of difference in the stated address of assessee and on which notices were being communicated and therefore he submitted that the cases of the assessee could not be explained before the authorities below and it would be fair to both parties if the cases are set aside to the Assessing officer for re adjudication on the issues after the assessee is allowed sufficient opportunity of being heard.

6. The Id CIT-DR stated that before Ld. CIT(A) the assessee filed appeals and even then the assessee did not appear before him despite of various notices as mentioned in his order which proves that assessee is not interested in perusing his appeals but at the same time he admitted that assessee has not availed any opportunity to explain his case on merits.

7. We have heard the rival parties and have gone through the material placed on record. We find that the assessee has taken additional grounds of appeal which are similar in both the appeals and which for the sake of completeness, are reproduced below :-

“Before,  
Hon’ble “G” Bench,  
Income Tax Appellate Tribunal,  
New Delhi.  
Sir,

Dated : 08-04-2022

**Sub: Prayer for admission of additional ground in the case of Sh.**

**Sanjeev Khatri for AY 2007-08 in ITA No. 3282/Del/2017 against the order passed u/s 144/147 of the Income Tax Act, 1961.**

*The above said appeal is fixed for hearing before Your Honour for today i.e. 12-04-2022.*

*The appellant begs to move the following grounds as additional grounds:-*

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO and that too without assuming jurisdiction as per law and without complying with 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 not quashing the impugned reassessment order passed by Ld. AO 144/147, is bad in law and against the facts and circumstances of the Case.*

*Since the above grounds of appeal are purely legal and do not require fresh facts to be investigated and go to the root*

*of the matter, it is prayed that the same may please be admitted in view of the following judgments:*

- ***CIT vs. Sinhgad Technical Education Society, (2017) 397 ITR 0344 (SC)***
  - ***NTPC Ltd. vs. CIT, (1998) 229 ITR 0383 (SC)***
  - ***VMT Spinning Co. Ltd. vs. CIT & Anr., (2016) 389 ITR 0326 (P&H)***
  - ***CIT vs. Sam Global Securities, (2014) 360 ITR 0682 (Del.)***
  - ***Siksha vs. CIT, (2011) 336 ITR 0112 (Orissa)***
  - ***Inventors Industrial Corporation Ltd. vs. CIT, (1992) 194 ITR 0548 (Bom.)***
- I shall be highly obliged.*

*Thanking you,  
Yours Faithfully,  
Sd/-  
(Sanjeev Khatri)”*

8. The Ld. AR through these additional grounds has prayed that the orders passed by Assessing Officer be quashed and be declared as void ab initio in view of the fact that the Assessing Officer had not correctly acquired the jurisdiction and had not complied with the conditions of Section 147 to 151 of the Act. The additional grounds taken by assessee are partly legal in nature of partly factual and for admission as additional grounds of appeal it requires, further factual investigation as to how the notices issued u/s 148 were having different addresses than the address mentioned in the return of income for Assessment Year 2013-14 and also from the address mentioned in PAN Data base. It is undisputed fact that assessee had not filed regular returns of income for these assessment years and therefore the Assessing officer must have issued notices to the assessee on the basis of address given on the bank statements from where the department had the information that assessee had made certain deposits in the

bank account. Since these facts are not on record, therefore, we hold that the grounds taken by assessee as additional ground of appeal are not purely legal in nature and are both factual and legal and therefore cannot be admitted and therefore we dismiss the additional grounds in both years.

9. Now coming to the arguments of Ld. AR that since there was a difference in the address on the notices u/s 148 and on the last address known to the department the assessee could not attend to the assessment proceedings we tend to agree with this argument and therefore we are of the opinion that the matter requires re-adjudication by Assessing officer.

10. As regards the appeal before Ld. CIT(A), We find that despite having filed appeals before Ld. CIT(A) the assessee did not appear before Ld. CIT(A) also and if on one or two occasions he appeared but he did not file any evidences in support of his case. The Ld. CIT(A) has therefore, dismissed the appeals of the assessee. Though in view of fact that assessee did not co-operate in the proceedings before Ld. CIT(A) despite getting so many notices on the address mentioned in the appeal memo, the assessee does not deserve any second chance but keeping in view the equity and principle of natural justice, we are of the opinion that one more opportunity should be given to the assessee to explain his case. Therefore, we set aside the matters to Assessing Officer with the direction to decide the issues afresh after affording to the assessee a reasonable opportunity of being heard.

11. The assessee is also directed to co-operate in the proceedings before Assessing Officer. In view of the above appeals in ITA no. 3282, 3283 are allowed for statistical purposes.

12. ITA No. 445 is against the penalty imposed and sustained by Ld. CIT(A) u/s 271(1)(c) of the Act which is consequential to the additions sustained by Ld. CIT(A) during assessment Year 2008-09.

13. Since, we have set aside the matters to the Assessing Officer for re-adjudication the appeal in ITA no. 445/Del/2019 is also set aside to Assessing officer with a direction to pass fresh penalty order after completing assessment in accordance with law.

14. Consequently, all these appeals are allowed for statistical purposes.

Order Pronounced in the Open Court on 30/06/2022.

Sd/-

**(C.M.GARG)**  
**JUDICIAL MEMBER**

Sd/-

**(T.S.KAPOOR)**  
**ACCOUNTANT MEMBER**

**Dated: 30/06/2020**

\*Binita, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, New Delhi**