

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

**BEFORE,  
SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.4530/Del/2014  
(ASSESSMENT YEAR 2008-09)**

Smt. Shakuntala Devi L/H of Late Shri Raghuvir Singh 869/1 Rainbow Vihar Meerut Road Muzaffarnagar PAN-AGNPS 3451Q <b>(Appellant)</b>	Vs.	Income Tax Officer Ward-2(2) Muzaffarnagar  <b>(Respondent)</b>
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Appellant by	None
Respondent by	Sh. Abhishek Kumar, Senior Departmental Representative ("Sr. DR" for short)

**ORDER**

**PER ANADEE NATH MISSHRA, AM**

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-Muzaffarnagar ["Ld. CIT(A)", for short], dated 31/03/2014 for Assessment Year 2008-09.

Grounds taken in this appeal are as under:

*"1. That the Ld. CIT(A) has erred in confirming the order passed by the Assessing Officer and thereby confirming the*

assessment order and tax imposed by him u/s 148/143(3) of the Act.

2. That the Ld. CIT(A) has erred in holding the initiation of proceeding u/s 147 on the basis of complaint without verifying the facts of the complaint against the deceased and without confronting the material to the legal heir of deceased and therefore, was liable to be quashed being the action against natural justice.

3. That the appellant is not provided proper and reasonable opportunity to argue the appeal by Ld. CIT(A). The appeal was fixed for hearing for 31.03.2014 at 3.55 PM and the notice is served by Speed Post on 31.03.2014 at 3.40 PM on peon, who informed the counsel for date of hearing at 4.00 PM and the counsel waited upto 5.00 PM on 31.03.2014 in office of CIT(A), who was not present in office and information is provided that he is on way from Meerut to Muzaffarnagar and started journey at 4.00 PM from Meerut after hearing the appeals there. The appellant has not been provided any reasonable opportunity of being heard, therefore, the impugned order is liable to be quashed.

4. That the Ld. CIT(A) has decided the appeal on 31.03.2014, which is not possible in the circumstances and facts of the case when many appeals were listed, which are decided on same day. The impugned order as passed by Ld. CIT(A) in the appeal of appellant is not heard and decided on 31.03.2014 and therefore, the order passed by Ld. CIT(A) is liable to be quashed.

5. That the Ld. CIT(A) has erred in upholding the validity of reassessment proceeding and addition of Rs.14,80,000/- without considering the fact that the provisions of section 40A(3) are not invocable as there is no income under the head "Profits and gains of business or profession" and the alleged payment of

*Rs.74,00,000/- in cash is not payment of expenditure and therefore, the order passed in pursuance to such proceeding is liable to be quashed.*

*6. That the Ld. CIT(A) has erred in upholding the validity of reassessment proceeding despite the fact that the appellant is not provided any material for rebuttal and without proving any evidence regarding addition of Rs.59,20,000/- and therefore, the order passed by the ITO was bad in law.*

*7. That the assessment is made in the name of appellant as legal heir of Late Shri Raghuvir Singh who died without communicating the particulars of investments and source(s) thereof, so the appellant requested time to find out papers relating the investments and sources thereof, but the assessing officer has neither allowed time nor confronted with the particulars of investment. Ld CIT(A) has erred in confirming the assessment order without considering the facts placed on records.*

*8. That the Ld. CIT(A) has erred in confirming the addition of Rs.74 lac made by the Assessing Officer, without application of mind and therefore, the additions made by him was uncalled for and be deleted from the income of the appellant.*

*9. That the Ld. CIT(A) has erred in dismissing the grounds raised by the appellant in respect of addition of Rs.74 lac on surmises and conjectures and therefore, order passed by him is not sustainable in law.*

*10. That the appellant seeks to add, amend, alter, abandon or substitute any of the above grounds during the hearing of the appellant.”*

(B) At the time of hearing before us, the assessee was represented by none. In the absence of any representation from the assessee side, we heard the Ld. Sr. DR for Revenue. We took notice of the fact that the impugned appellate order passed by the Ld. CIT(A) dated 31/03/2014, is an *ex-parte* order. We particularly gave our anxious consideration to grounds 3, 4 and 7 of appeal and sought the views of Ld. Sr. DR on these grounds of appeal; as to whether in view of these grounds of appeal; and having regard to specific facts and circumstances of the present appeal, whether this is a fit case for remanding back all the issues in dispute for fresh order. The Ld. Sr. DR for Revenue, in all fairness, submitted that all the issues in dispute may be remanded back with the direction to pass fresh order in accordance with law.

(B.2) We also have perused the assessment order dated 30/03/2013, in which paragraph no.3, which drew our particular attention, is reproduced below:

*“3. During the course of assessment proceedings the assessee was required to explain the source of income from which he invested Rs.74,00,000/- in cash in joint venture viz M/s Dwarika J. V. during the year. In her reply Smt. Shakuntala Devi (Legal Heir) has stated that she is*

*not able to file the details of investment with M/s Dwarika J.V. and other assets as she is not aware about the business activities of her late husband, who suddenly expired on 09.01.2008. Smt. Shakuntala Devi has got little information that her husband deposited with M/s Dwarika J.V. after selling part of his agriculture land, other fixed and movable assets, agriculture income and other savings of his previous years, borrowed money from his relatives, friends etc. as he was very optimistic about the M/s Dwarika.J.V. project. No other information is available with the legal heir as on date. Along with this reply she filed statement of affairs as on 31.03.2007 and as on 31.03.2008 which is placed on record.”*

(B.2.1) In view of the foregoing, we set aside the impugned appellate order dated 31/03/2014 of the Ld. CIT(A) and restore all the issues in dispute to the file of Assessing Officer, with direction to pass a *denovo* order in accordance with law after providing reasonable opportunity to the assessee. We also direct the Assessing Officer to give sympathetic consideration to the fact (as recorded in the assessment order dated 30/03/2013) that the assessee, a widow, is legal heir of her late husband who suddenly expired, leaving the assessee with little information; and in view of this, the Assessing Officer is further directed to extend all possible assistance and guidance to the assessee in making proper submissions before the Assessing Officer. All the grounds of appeal

are treated as disposed off in accordance with the aforesaid directions.

(C) In the result, for statistical purposes, this appeal is treated as partly allowed.

This order was already pronounced orally on 24<sup>th</sup> August, 2022 in Open Court, in the presence of Ld. Sr. DR for Revenue. Now this order in writing is signed today on 25/08/2022.

Sd/-

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

Dated: 25/08/2022

*Pk*

Copy forwarded to:

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

Sd/-

**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW, DELHI