

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND  
SH. NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER**

ITA No. 748/Del/2021  
(Assessment Year : 2017-18)

Arshi Alam 1710, Gali Saleem Vali, Pahari Bhojla, Turkman Gate, New Delhi-110 006  <b>PAN No. DMSPA 8623 N</b> <b>(APPELLANT)</b>	Vs.	JCIT Range – 48, New Delhi  <b>(RESPONDENT)</b>
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Assessee by	Shri GS Kohli, C.A.
Revenue by	Shri Kanav Bali, Sr. D.R.

Date of hearing:	19.09.2022
Date of Pronouncement:	19.09.2022

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 30.03.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi relating to Assessment Year 2017-18.

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

3. AO has noted that assessee had sold a property situated at Bulbuli Khana, Sita Ram Bazar, Delhi for Rs.7,50,000/- and the entire sale consideration was received in cash. AO was of the view that sale of property in cash has resulted into contravention of provision of Section 269SS of the Act. He accordingly, vide order dated 07.08.2019 passed u/s 271D r.w.s 269SS of the Act levied penalty of Rs.7,50,000/-.

4. Aggrieved by the penalty order passed by AO, assessee carried the matter before CIT(A) who vide order dated 30.03.2021 in Appeal No.CIT(A), Delhi-16/10285/2019-20 upheld the penalty levied by AO. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds.

*“The appellant order passed by the Ld CIT (A) are unlawful, illegal and against the natural law of justice.*

- 1. The Ld CIT(A) had failed to appreciate the facts placed on the record and had dismissed an appeal in an arbitrary manner.*
- 2. The Ld CIT(A) has wrongly contended that no application under rule 46A was preferred before him while the humble appellant is in possession of the relevant documents in this respect.*
- 3. That the documents placed on the record along with an application under rule 46A evidently proves that the consideration as well as the possession of the property was held prior to March, 2015, thus, the relevant proviso under appeal was not applicable.*
- 4. That the appellant craves their right to amend, delete or add any grounds of appeals at or before the time of hearing.”*

5. Learned AR pointed to Ground No.3 of the grounds and submits that the application made before CIT(A) under Rule 46A was not considered by him. He submitted that penal provision u/s 271D has been inserted by Finance Act, 2015 w.e.f 01.06.2015. He submitted that the transaction of sale by the assessee had taken place in March 2015, the payment was received in March 2015 and therefore it was prior to the insertion of the proviso and therefore penalty was not leviable. He submitted that before CIT(A) assessee had placed additional evidences *inter alia* in the form of affidavit from the legal heir of the purchaser stating that the entire payment was made before 31.03.2015 and the possession of the property was also given in March 2015, the copy of receipt of cash to substantiate the claim of having entered the transaction prior to the amendment made by Finance Act but however CIT(A) did not consider the additional evidences. He also pointed to the copy of application made under Rule 46A before CIT(A). He therefore submitted that since CIT(A) has not considered the additional evidences and since it goes to the root of the matter, CIT(A) be directed to consider the additional evidence filed by assessee and thereafter decide the issue. He further submitted that assessee undertakes to promptly file all the documents called for by the authorities.

6. Learned DR did not seriously object to the request made by Learned AR.

7. We have heard the rival submissions and perused the material available on record. Before us, Learned AR has placed in the paper book the copy of the request made before the CIT(A) praying for admission of additional evidences under Rule 46A of the I.T. Rules. The submission of assessee of having made a request for admission of additional evidence under Rule 46A has not been controverted by Revenue. It is also a fact that the additional evidences were not admitted and CIT(A) and he decided the issue without taking into consideration those additional evidences. It is a settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no party should be condemned unheard. Considering the totality of the facts, we are of the view that the additional evidences filed requires to be admitted. We therefore, admit the same. Since the additional evidences filed before the CIT(A) were not considered by CIT(A), we therefore direct the CIT(A) to consider the additional evidences filed by the assessee and after considering the additional evidences, submissions of the assessee and after making the required verification, decide the issue afresh on merits by a speaking order. In view of the aforesaid facts, we set aside the order of CIT(A) dated 30.03.2021 and restore the issue back to the file of CIT(A) for re-adjudication of the issues after considering the submissions of assessee and in accordance with law. Needless to state that CIT(A) shall grant adequate opportunity of hearing to both the parties. In view of our decision

to restore the issue back to CIT(A), we are not adjudicating on merits the other grounds raised by assessee. **Thus the ground of assessee is allowed for statistical purposes.**

**8. In the result, appeal of the assessee is allowed for statistical purposes.**

**Order pronounced in the open court on 19.09.2022**

**Sd/-**

**(NARENDER KUMAR CHOUDHARY)  
JUDICIAL MEMBER**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 19.09.2022

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**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI