

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

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

ITA No.1780/DEL/2019
Assessment Year: 2010-11

Ramakant U Sharma HUF Shop No.5, DDA Complex, Gulmohar Park, New Delhi PAN No.AAJHS2310C	Vs	ITO Ward- 32 (5) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Parkash A. Doshi, CA
Respondent by	Sh. Om Prakash, Sr. DR

Date of hearing:	26/10/2022
Date of Pronouncement:	31/10/2022

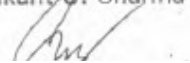
ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the assessee wherein the correctness of the order dated 14.02.2019 passed by CIT(A)-11, New Delhi, pertaining to A.Y.2010-11 assessment year is assailed on various grounds of appeal. These reads as under :-

- (i) "On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in not accepting that
- a) A no reasons for reopening of assessment u/s 147 was issued;
- b) A show cause notice issued by the Income Tax Officer, on 15th December, 2017 was a nebulous notice and was referring to two different sections i.e. Section 50C and Section 69 as undeclared investments and these charges, is rendered incapable of defending the charge per se. And that, it would be in utter violation of the principles of nature justice, such notice being null and void ab initio.
- (ii) Without prejudice, the Id. CIT (A), erred in concluding that, the Assistant Valuation Officer has given the valuation report after considering all the aspects of the property in question. Further, no proper chance was given to the assessee to explain and submit the details affecting the valuation of the property. Further, the Id. CIT(A), erred in concluding that, "Further it is to noted that the collector rates are also determined considering the location and limitation/constraints if any in the areas for which the rates are determined."
- (iii) Without prejudice, the Id. CIT(A), erred in not considering the submission that, the computation of income should be done on the basis of Capital Gains i.e. after deducting an Indexed Cost of Acquisition and not the selling price, as determined by the Assessing officer.
- (iv) The Appellant craves leave to add, to amend and/or to alter any of the grounds of appeal, if need be.
- (v) The Appellant, therefore prays that on the grounds stated above, the order of CIT(A)-11, New Delhi may be set aside and the submissions of your appellant be accepted.

For Ramakant U. Sharma HUF



2. The Ld. AR inviting attention to the order sheets submitted that repeatedly the department has been seeking time to bring on record the documents to support the jurisdictional issue. For the said purpose attention was invited to the order sheet entries dated 25.10.2012; 27.01.2022, 10.02.2022; 10.05.2022; 11.07.2022 and yet again time was given on 01.09.2022. Accordingly, it was his submission that a number of opportunities have been provided to the Revenue to produce assessment records so as to justify that assumption of jurisdiction was valid in law. Thus, it was his prayer that the appeal be allowed quashing the orders.

3. The Sr. DR agreed that the department has been directed to

produce the assessment records. It was submitted that he has filed a reply received from the Assessing Officer on email dated 20.10.2022 wherein it is informed that the assessment record for the specific period has not been located. For ready reference letter received and made available is extracted here under :-

10/20/22, 1:47 PM Gmail - Appeal in the case of Sh. Ramakant U Sharma (HUF) PAN: AAJHS2310C) for the AY 2010-11 in ITA No. 1780/Del/2018-...

M Gmail SMC Bench <itatdelhidr1@gmail.com>

Appeal in the case of Sh. Ramakant U Sharma (HUF) PAN: AAJHS2310C) for the AY 2010-11 in ITA No. 1780/Del/2018-reg.

delhi.ito29.1 <delhi.ito29.1@incometax.gov.in> Thu, Oct 20, 2022 at 1:46 PM
To: SMC Bench <itatdelhidr1@gmail.com>

Kindly refer to trailing mail.

In this regard, it is brought to your kind notice that despite all possible efforts, the assessment record in respect of case M/s Ramakant U Sharma(HUF) for the period relevant to the AY 2010-11 has not been located.

Submitted for kind perusal & consideration.

Yours faithfully,

ITO, Ward-29(1)
New Delhi

On 19/10/22 16:37, SMC Bench <itatdelhidr1@gmail.com> wrote:

*****FINAL OPPORTUNITY***** **MOST URGENT/ COURT MATTER**

Sir,
Ref: This office letter F.No. Sr. DR/ITAT/SMC-Bench/2021-22/42 dated 12.07.2022 & 02.08.2021(copy attached) which was duly acknowledged by you vide your email dated 08.07.2022.

Please refer to the letter mentioned above with reference to the subject cited above.

2. The above-mentioned appeal came up for hearing before the Hon'ble SMC Bench, ITAT, New Delhi. During the course of hearing, the Hon'ble Bench acceded the adjournment as per requested by your office with showing its displeasure on non-availability of the Assessment record.

3. In this regard, you are once again requested to direct the Assessing Officer to send the Assessment Folder (in original) along with Note Sheets for the A.Y. 2010-11 (duly page numbered) in the case of Sh. Ramakant U Sharma (HUF) PAN: AAJHS2310C) by 2 Pm Tomorrow positively to this office.

4. In case of failure to comply with the direction the Assessing Officer may be asked to appear in person before the Hon'ble Bench.

<https://mail.google.com/mail/u/0/?ik=b05ad69ef5&view=pt&search=all&permmsgid=msg-f%3A1747193740696469265&simpl=msg-f%3A17471937406...> 1/3

4. Accordingly, he pleaded his inability to meet the jurisdictional challenge as the relevant information from the field was not traceable.

5. The Ld. AR inviting attention to the impugned order submitted that before the First Appellate Authority the assessee has specifically raised specific arguments alleging that till date the Assessing Officer has never supplied the assessee reasons for reopening assessment.

5.1 For ready reference the relevant extract from page-4 of the impugned order was relied upon to emphasize the number of times the issue had been agitated. The submissions of the assessee extracted in the order, it was argued, would show that the assessee had also requested the First Appellate Authority to provide the reasons recorded. Despite repeated request to the Assessing Officer agitated before the CIT(A) also, the reasons till date have not been provided for reopening the assessment. Infact, it was argued that the AO had never recorded the reasons for reopening. It is seen that the said objection though extracted in the order has not been addressed by the First Appellate Authority. It has been argued that number of opportunities have been given by the Coordinate Benches right from 25.10.2021 onwards. The facts on record and the reply of the AO, it was argued,

shows that reasons for reopening in fact were never recorded. Accordingly, considering the reply made available by the Revenue, it was his prayer that the orders be quashed.

6. The Sr. DR relies on the order.

7. I have heard submissions and gone through material available on record. Considering the departmental reply made available read alongwith number of opportunities provided to the Revenue to substantiate what reasons were recorded and whether it was made available to the assessee, I find that in the face of the reply available, the reasons recorded are not available with the Revenue. Hence, in the light of the specific submissions extracted in the order alleging non providing of the reasons for reopening and lack of filing the same before the ITAT, the absence of finding on the issues by the First Appellate Authority gives rise to concerns that possibly reasons for reopening were never recorded. Accordingly, I am convinced that the jurisdiction has been assumed in the peculiar facts of the present case is without following the mandatory procedures. Without demonstrating the availability of the reasons recorded for the reopening on record, the assumption of jurisdiction and exercise of power in violation of the settled legal jurisprudence cannot be sustained. The orders are

accordingly quashed. Said announcement was made in the Open Court at the time of hearing.

7. Accordingly, the appeal filed by the assessee is allowed.

Said order was pronounced in the open court on 31st October, 2022.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Poonam/CHD

Date:- 31.10.2022

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI