

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD ‘SMC’ BENCH, ALLAHABAD**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.34/ALLD/2022**

**Assessment Year: 2014-15**

Mohammad Rehan Khan, H. No. 1219, Gabharia, Gorabarik, Tehsil-Sadar, Sultanpur-228001 <b>PAN-AQFPK6968A</b>	v.	The Income Tax Officer, Sultanpur-228001
(Assessee)		(Respondent)

Appellant by:	None
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	23.01.2023
Date of pronouncement:	23.01.2023

**ORDER**

**SHRI VIJAY PAL RAO, JUDICIAL MEMBER:**

This appeal by the assessee is directed against the order dated 15.09.2022 of CIT(A) (National Faceless Appeal Centre, Delhi) for the assessment year 2014-15.

The assessee has raised the following grounds of appeal as under:-

*“1. Because the CIT(A) has erred on facts and in law in dismissing the appeal ex-parte without giving adequate opportunity, such dismissal of appeal is against the principles of natural justice, bad in law, the same be quashed.*

*2. Because the CIT(A) has failed to appreciate the fact that the assessee had sought adjournment on 15.09.2022 till 30.09.2022 for the notice issued u/s 250 on 25.08.2022, the assessee being prevented by sufficient and reasonable cause in not filing the submissions, the order passed by the CIT(A) is bad in law and be quashed.*

*3. Because the CIT(A) has erred on facts and in law in not passing a speaking order, in respect of all the 8 grounds of appeal taken before him, failure to pass a speaking order, makes the order passed by the CIT(A) bad in law and hence be quashed.*

*4. Because the addition/variation made to the income assessed being done on protective basis, the CIT (A) was not justified in upholding the additions*

*made by the AO till such time the additions made on substantive basis are deleted, failure to do such exercise, makes the order of the CIT(A) wholly against the principles of law and the same be quashed.*

*Because without prejudice to the above-:*

- a. The CIT(A) has erred on facts and in law in upholding the addition of payments made for purchase of property by the assessee of Rs.8,66,249/- part of which was made in AY 2008-09 as detailed in the property deed and part in the assessment year 2014-15 in assessment proceedings u/s 143(3) which were beyond his jurisdiction, making of such additions is bad in law and be deleted.*
- b. The CIT(A) has erred on facts and in law in not considering the payments made for purchase of property during the assessment year out of the income earned and established sources and making the addition without any basis rendering the addition bad in law and on facts and liable to be deleted.*
- c. The CIT(A) has erred on facts and in law in not taking into consideration the payments already made in AY 2008-09 in the bank a/c. of seller pursuant to agreement for purchase of properties as also mentioned in property deeds already provided to him and failed to provide benefit available u/s 43CA(3) of the Income Tax Act, 1961 by considering the circle rates applicable in FY 2008-09 rendering the assessment order bad in law.*
- d. The CIT(A) has erred on facts and in law in upholding the issuing of notice u/s 144 dated 13.12.2016 against which the assessment ought to be made u/s 144 while the impugned assessment order has been passed u/s 143(3) rendering it bad in law.*
- e. The CIT(A) has erred on facts and in law in upholding the failure to mention the relevant section under which the addition of Rs. 8,66,249/- was being made by the AO rendering such addition bad in law and liable to be deleted.*
- f. The CIT(A) has erred on facts and in law in upholding the addition without referring the valuation of the property to DVO inspite of the assessee disputing the valuation by detailing the deficiencies in properties purchased rendering the addition bad in law and liable to be deleted.*
- g. The CIT(A) has erred on facts and in law in upholding the assessment order in the name of Mohd. Rizwan Khan & Others (AOP) making an addition of Rs. 2,54,82,500/- including the amounts paid by the assessee during the relevant AY 2014-15 and also AY 2008-09 whereas no such entity existed and no PAN has been allotted to any such entity rendering the assessment order passed in the name of Mohd. Rizwan Khan & Others, bad in law and also on facts.*

- h. *Because the CIT(A) has failed to appreciate that the property was purchased alongwith 5 (five) other co- owners payment for which was partly made in financial year 2007-08 and partly during the impugned year, the addition made in the year under consideration of the entire amount of Rs. 8,66,249/- relating to the assessee, is bad in law and be deleted.*
- i. *Because the entire investment made in the purchase of property having being added in the hands of AOP on a substantive basis, question of making and upholding any addition on protective basis in the hands of the assessee does not arise, the addition made and upheld by the CIT(A) be deleted.”*

2. None has appeared on behalf of the assessee when this appeal was called for hearing nor any application for adjournment has been filed. It transpires from the record that on the earlier occasions, the assessee sought the adjournments and the hearing was adjourned for today. Accordingly, the Bench proposes to hear and dispose of this appeal *ex parte*.

3. Ground no. 1 of the assessee’s appeal which is regarding the *ex parte* order passed by the CIT(A) without giving him adequate opportunity of hearing. I have heard learned DR and carefully perused the impugned order of the CIT(A). The CIT(A) has dismissed the appeal of the assessee summarily as under:-

*“The appellant was sent notices of hearing/submission on 25.01.2022, 25.08.2022 and 06.09.2022. There was no reply from the appellant at given address. Therefore, it seems appellant has no interest in pursuing the appeal. Hence, I do not find any reason to interfere with the order passed by the assessing officer. In sum, appeal is dismissed.”*

4. Thus, it is clear that the CIT(A) has dismissed the appeal of the assessee for non-prosecution and without discussing the issue on merit. The impugned order of the CIT(A) is a non-speaking order which is against the provisions of section 250 and 251 of the Income Tax Act. Accordingly, in the facts and circumstances of the case and in the interest of justice, the impugned order of the CIT(A) is set aside. The matter is remanded to the record of the CIT(A) for deciding the same on merits after giving one more opportunity of hearing to the assessee. Since the matter is set

aside to the record of the CIT(A), therefore, the other grounds of appeal raised by the assessee become infructuous.

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

Order pronounced in the open Court on 23.01.2023 after conclusion of hearing at Allahabad, U.P.

***Sd/-***

**[VIJAY PAL RAO]**  
**JUDICIAL MEMBER**

Date: 23.01.2023

Allahabad

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order  
Sr. P.S.