

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.1147/Del/2018  
निर्धारणवर्ष/Assessment Year: 2011-12

<b>RAM MEHAR C/o R K GAUR, 7/204, ADITYA COMPLEX, COMMUNITY CENTRE, PREET VIHAR, NEW DELHI. PAN No. AJOPM0184G</b>	<b>बनाम Vs.</b>	<b>ITO Ward-1, PANIPAT</b>
अपीलार्थी <b>Appellant</b>		प्रत्यर्थी/ <b>Respondent</b>

निर्धारितकीओरसे / <b>Assessee by</b>	<b>Sh. R K Gaur, CA</b>
राजस्वकीओरसे / <b>Revenue by</b>	<b>Shri B S Anand, Sr. DR</b>

सुनवाईकीतारीख/ <b>Date of hearing:</b>	<b>22.11.2022</b>
उद्घोषणाकीतारीख/ <b>Pronouncement on</b>	<b>09.02.2023</b>

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the Assessee against the order of learned CIT(Appeals)-Karnal dated 01.12.2017 for the AY 2011-12. The assessee raised the following grounds of appeal: -

1. *"On the facts and circumstances of the case and in law learned CIT (A) has erred in sustaining the action of AO under section 148 without any tangible and cogent material in violation of mandatory conditions stipulated under the law.*
2. *On the facts and circumstances of the case and in law learned CIT (A) has erred in sustaining the action of AO in invoking section 148 merely on the basis of AIR without due process of law.*

3. *On the facts and circumstances of the case and in law, learned CIT appeals wrongly upheld the order of AO which travelled far beyond factual matrix confirming the addition of Rs 68.50 lacs out of sales proceeds of agricultural land deposited in his bank account by the father of the appellant.*
4. *On the facts and circumstances of the case and in law learned CIT (A) erred in not appreciating the additional evidence filed under Rule 46A.*
5. *On the facts and circumstances of the case and in law, order of the AO is bad in law and against the tenets of natural justice.*
6. *The appellant craves to add, alter, modify or delete any ground of appeal during the pendency of appeal.”*

2. The Ld. Counsel for the assessee at the outset submits that before the Ld. CIT(A) the assessee has challenged the reopening of assessment u/s 148 as bad in law, however, the Ld. CIT(A) did not dispose off the said ground raised by the assessee. The Ld. Counsel for the assessee further submits that the Ld. CIT(A) did not give any independent finding on the additional evidences furnished by the Assessee and he has simply relied on the version of the Assessing Officer in his remand report. The Ld. Counsel for the assessee, therefore, submits that as the Ld. CIT(A) did not dispose off the jurisdictional ground on reopening of assessment and passed a very cryptic order without considering the additional evidences furnished, the matter may be restored back to the file of the Ld. CIT(A) for passing speaking order considering the additional evidences, submissions and ground of appeal of the assessee.

3. The Ld. DR has no serious objection in restoring the file of the Ld. CIT(A) for disposing off the matter afresh.

4. On hearing both the sides and perusing the orders of the authorities below, we observe that the Ld. CIT(A) passed a very cryptic order dismissing the appeal of the assessee without examining the merits and the additional evidences furnished by the assessee. The Ld. CIT(Appeals) dismissed the appeal of the assessee agreeing with the contention of the Assessing Officer that the affidavit filed by the assessee are only an afterthought and the addition made is on sound footing. We observed from the order of the Ld. CIT(Appeals) that there is no independent finding by the Ld. CIT(A) on the following additional evidences furnished by the Assessee: -

1. *Death Certificate*
2. *Copy of Bank A/c*
3. *Copy of Title deed owned by his father*
4. *Bayana slip between Vendor & Vendee*
5. *Affidavit of assessee for depositing money received from his father*
6. *Copy of certificate from revenue authority for the land being agricultural*
7. *Affidavit from all brothers of assessee.*

5. None of the above additional evidences have been considered and adjudicated on merits by the Ld. CIT(A) nor there was any finding as to how these evidences are irrelevant was given. We also observed that specific ground has been raised by the assessee before the Ld.

CIT(Appeals) challenging the reopening of assessment u/s 148 of the Act by the AO which ground was never disposed off. Therefore, taking the totality of facts and circumstances into consideration in the interest of justice, we restore this appeal to the file of the Ld. CIT(A) to decide the appeal afresh in accordance with law after providing adequate opportunity of being heard to the assessee.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 09/02/2023

**Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

**Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER**

Dated: 09/02/2023

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**