

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.69/Asr/2018
Assessment Year: 2007-08**

Sh. Davinder Kumar Sharma NK-10 Old Kotwali Bazar, Civil Lines, Jalandhar. [PAN: AXKPS6991B] (Appellant)	Vs.	Income Tax Officer, Ward-III (4), Jalandhar. (Respondent)
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Appellant by	None.
Respondent by	Sh. Ravinder Mittal, Sr. DR

Date of Hearing	21.02.2023
Date of Pronouncement	23 .02.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-2, Jalandhar,[in brevity the ‘CIT (A)’] order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] order dated 20.11.2017 for A.Y. 2009-10.The impugned order was emanated from the

order of the Id. Income Tax Officer, Ward-III (4), Jalandhar, (in brevity the AO) order passed u/s 144/147 of the Act date of order 20.03.2015.

2. Brief fact of the case is that the assessee's case was reopened u/s 148 on basis of the zerox copy of agreement for purchase of immovable property with a total consideration of Rs.2,25,00,000/-, out of which advance money of Rs. 20 lacs was paid in cash on 14.11.2006 and balance amount had paid to be on 31.07.2007. The Id. AO has received this information from DCIT, Central Circle, Chandigarh. The assessee had not filed the return of income for A.Y. 2007-08. The source of investment in property remained unexplained. The reason was recorded by the revenue and the assessment was completed in *ex parte* u/s 144/147 of the Act with addition amount of Rs.20 lacs. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

3. When the appeal was called for hearing, no one appeared on behalf of assessee to represent his case. There is no application for seeking adjournment either. On perusal of record, we find that the hearing is scheduled on 21/02/2023. Previously the dates were fixed number of times, but the notices were remained unserve. The assessee has never informed any change of communication address.

In view of the above and considering the nature of dispute, we proceed to dispose the appeal *ex-parte* qua the assessee after hearing the learned DR and on the basis of material available on the record.

4. We consider the orders of the revenue authorities, submission of the Sr-Dr and perused the documents available in the record. During hearing we found from the record that the assessee has filed additional ground of appeal on dated 20.12.2021. We reproduced the additional ground of appeal of the assessee here as below:

"That the Id.ITO having admitted in remand report (extracted on page 8 of appeal order) that photocopy of a purported 'agreement to sell' signed by appellant, was part of seized documents as per page 8 to page 11 of Annexure III, forwarded to the ITO at Jalandhar by DCIT Central Circle-1, Chandigarh, then the AO could initiate proceedings only under the overriding provisions of section 153C, and not under the general provisions of section 147/148. Consequently, the order under appeal is void ab initio."

5. The Id. Sr. DR vehemently argued but did not oppose for acceptance of additional ground of the assessee. The bench has accepted the additional ground of the assessee for further adjudication. The assessee claimed that the assessee is liable to assessed u/s 153C but not u/s 147 of the Act. The entire assessment was

claimed as bad in law. The issue was first time agitated before the Bench & was not even taken before any of the lower authorities. As per the available documents it is clear that assessee had never made any objection before the Id. AO for proceeding of section 147 instead of u/s 153C. We remit back the issue before the Id. CIT(A) for *denovo* adjudication on assessee's additional ground. Needless to say the assessee should get the reasonable and adequate opportunity of being heard in set aside proceedings.

6. In the result, the appeal of the assessee bearing **ITA No. 69/Asr/2018** is allowed for statistical purposes.

Order pronounced in the open court on 23.02.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order