

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "H" NEW DELHI]**

**BEFORE ANIL KUMAR CHATURVEDI, ACCOUNTANT MEMBER
AND**

SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 1821/DEL/2020 (A.Y 2010-11)

Vikash Chaudhary C/o. BK Kapur & Co. CA 17, Navyug Market, Ghaziabad, Uttar Pradesh-201001 PAN: AHJPC9587C (APPELLANT)	Vs.	ITO Ward-2(5), Noida, Uttar Pradesh. (RESPONDENT)
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Appellant by	Shri Madhav Kapur, Adv
Respondent by	Ms. Sangeeta Yadav, Sr D. R.;

Date of Hearing	29.03.2023
Date of Pronouncement	06.04.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order dated 30/08/2018 of the Id. Commissioner of Income Tax (Appeals)-1 (hereinafter referred to CIT (Appeals) New Delhi, for assessment year 2010-11.

2. The assessee has raised the following grounds of appeal:-

“1. That on the facts in the circumstance of the case and law, the very initiation under section 148 is beyond the jurisdiction of Ld. AO which makes the entire reassessment proceeding illegal and void-ab-initio.

2. That on the facts in the circumstance of the case and law, the impugned order of Ld. CIT(A) is illegal and beyond his jurisdiction in view of the facts and circumstance of the case.

3. That on the facts in the circumstance of the case and law, the impugned order passed u/s 147/144 of Ld. CIT(A) is against the principle of natural justice and suffers from grave error.

4. That the addition confirmed for Rs. 1,09,11,507/- by the Ld. CIT(A) vide order dated 30.08.2018 is based on surmises, conjectures and estimates without application of mind which makes the impugned order illegal and bad in law.

5. That in any view of the facts and circumstance of the case the addition confirmed on account of undisclosed investment which do not pertain to the impugned assessment year made under section 69 of the Income Tax Act, 1961 for Rs. 54,55,753/- cannot be sustained and deserves to be deleted.

6. That the Ld. CIT(A) is legally wrong and against the facts of the case on alleged non compliance of requirement of Section 249(1) (a) and 249 (4) (b) of the Income Tax Act, 1961.

7. *That the assessee reserves it's right to add, amend/ modify the grounds of appeal.”*

3. Brief facts of the case are that, the assessee filed return of income for the Assessment Year 2010-11 at Rs.3,00,000/-, the assessment order came to be passed against the assessee u/s 147/144 of the Act by adding long term capital gain of Rs.54,55,753/- to the income of the assessee and also made addition of Rs. 54,55,753/- treating the same as investment from undisclosed sources and made addition u/s 69 of the Act.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). The Ld.CIT(A) vide order dated 30/08/2018 dismissed the appeal on the ground that the assessee has not complied with the requirement of “Section 249 (1)(a)” of the Act in paying the fees for preferring the appeal.

5. Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal.

6. The Ld. Counsel for the assessee drawn our attention to Form No. 35 filed before the CIT(A) and submitted that the assessee had paid the requisite fees for filing the appeal which is reflected in Column 16 of the said Form. Therefore, submitted the CIT(A) committed an error in dismissing the appeal on the ground of non compliance of condition mentioned under Section 249(1) (i) of the Act.

7. The Ld. DR has relied on the order of the CIT(A) and prayed for dismissal of the Appeal.

8. We have heard the parties and perused the material available on record. It is evident from the record that the assessee had paid the requisite fees for filing the appeal before the CIT(A). The observation of the CIT(A) that the '*assessee has not paid the fees and not complied the requirements of Section 249(1)(a) of the Act*' is erroneous and contrary to the fact. Apart from the same, the CIT(A) has not decided the matter on merit. Therefore, restore the appeal to the file of the CIT(A) for de-novo verification. Accordingly, the matter is remanded to the file of CIT(A) to decide the issues involved in the appeal on merit after providing opportunity of being heard to the assessee.

9. In the result, appeal filed by the assessee is allowed for statistical purpose. Since, we have remanded the matter to the file of CIT(A) for de-novo adjudication on merit, the grounds on the merits are not adjudicated by us.

Order pronounced in the Open Court on 06th April, 2023.

Sd/-
(ANIL KUMAR CHATURVEDI)
ACCOUNTANT MEMBER
Dated : 06/04/2023

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

MEHTA/R.N, Sr. PS

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI