

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.1128/Del./2020
(ASSESSMENT YEAR : 2010-11)**

Sudesh Devi,
Village Kherisansal, PO Dhani Phogat,
Charkhi Dadri,
Bhiwani – 127 306 (Haryana).

vs. ITO, Ward 3,
Bhiwani.

(PAN : BEWPD6756F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Prem Lamba, Advcoate
REVENUE BY : Shri B.M. Singh, Sr. DR

Date of Hearing : 25.04.2023
Date of Order : 27.04.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of Id. CIT (Appeals), Hisar dated 01.01.2020 pertaining to AY 2010-11.

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

“1. On the facts and circumstances of the case, the confirmation of initiation of the proceedings under Section 147, read with Section 148, made by CIT (A) Hisar. is bad and liable to be quashed as the condition and procedure prescribed under the statute have not been satisfied and complied with.

2. On the facts and circumstances of the case, the reassessment proceedings confirmed by the learned CIT (A)

Hisar are bad in the eye of law as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are contrary to the facts.

3. On the facts and circumstances of the case, the order passed by the CIT (A) is bad in the eye of law and on facts, as the same is made on the basis of reasons recorded without there being any independent application of mind.

4. On the facts and circumstances of the case, Id. CIT (A) has erred both on facts and in law, justified the assessment at an income of Rs. 58,41,935/- as against income of RS.NIL- declared by the appellant.

6. That on the facts and circumstances of the case, the learned CIT (A) has erred in confirming an opinion that purchase of ancestral agriculture land from blood relative through gift of Rs 58,41,9351- is unexplained investment without appreciating the that the said investment itself speaks everything like identity, creditworthiness and genuineness .

7. That on the facts and circumstances of the case, the learned CIT (A) has erred in confirming an addition of Rs 58,41,935/- on account of alleged unexplained investment during the year without taking cognizance of the fact that the above agriculture land was purchased through gift from blood relative.

9.(i) That the addition has been made grossly indulging in conjecture and surmises without there being any direct adverse material against the assessee, based only on suspicion.

(ii) That the addition has been made despite the assessee bringing on record all evidences and material to prove the identity, creditworthiness and genuineness of the transaction.

(iii) On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the addition on the basis of material collected at the back of the assessee without giving it an opportunity to rebut the same in violation of the principle of natural justice.

(iv) On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the addition on the basis of mistake of certain persons without giving it an opportunity to cross examine the same in violation of the principle of natural justice.

(v) On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the addition without taking the cognizance of reply filed against show-cause notice.

10. That the addition has been made grossly erred in forming adverse opinion in absence of any cogent corroborative material or evidence found during the course of search on third parties or brought on record.

11. That on the facts and circumstances of the case and in law the Ld. CIT (A) proceeded to make additions without appreciating that the appellant had duly discharged the onus.

12. The learned CIT (A) while confirming the order relied on report of the inspector which has been recorded under threat, pressure and was not out of free will, is not reliable and the facts mentioned in the statements so recorded are contradictory, far from reality and is not true.”

3. Though assessee has raised multiple grounds the main issue pressed by the Id. Counsel of the assessee is that Id. CIT (A) has dismissed the appeal for non-prosecution and not decided the issue on merits.

4. Brief facts of the case are that in this case, in the assessment order, Assessing Officer made addition on account of investment in purchase of land amounting to RS.58,41,935/-. This was claimed by the assessee to

be gift receipt. The plea was rejected and the impugned addition was made.

5. Upon assessee's appeal, Id. CIT (A) noted that assessee has not been cooperating and no response had come to the notices. He referred to case laws and dismissed the appeal for non-prosecution.

6. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

7. We find that Id. CIT (A) cannot dismiss the appeal for non-prosecution. It is incumbent upon him to pass a speaking order. Both the counsel fairly agreed to this proposition. Hence, in the interest of justice, we remit the issue to the file of Id. CIT (A) to decide the issue on merits and pass a speaking order. Needless to add, assessee should be given an opportunity of being heard.

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

Order pronounced in the open court on this 27th day of April, 2023.

**Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the day of April, 2023/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A), Hisar.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.