

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.6088/Del/2019
[Assessment Year : 2009-10]**

Karamveer Singh, D-28, South Extension Part-1, New Delhi-110049. PAN-AONPS8861C	vs	ITO, Ward-1(3), Ghaziabad.
APPELLANT		RESPONDENT
Appellant by	Shri Somil Aggarwal, Adv.	
Respondent by	Shri Om Prakash, Sr.DR	
Date of Hearing	12.06.2023	
Date of Pronouncement	15.06.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2009-10 is directed against the order of Ld. CIT(A), Ghaziabad dated 27.09.2017. The assessee has raised following grounds of appeal:-

1. *“That having regard to the facts and circumstances of the case, assumption of jurisdiction in reopening the impugned assessment and passing the impugned order u/s 144/147, is bad in law and against the facts and circumstances of the case and more so when statutory conditions as stipulated u/s 147 to 151 have not been complied with.*
2. *That in any case and in any view of the matter, assumption of jurisdiction in reopening the assessment u/s 147, is bad in law and against the facts and circumstances of the case.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the impugned reassessment order passed by Ld. AO on the ground that no notices u/s 148, 142(1) and 143(2) have been served upon the appellant.*

4. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in sustaining the action of Ld. AO in making addition of Rs.16,31,750/- by treating it as alleged unexplained investment in property u/s 69 and that too by recording incorrect facts and findings and without providing opportunity of being heard and in violation of principles of natural justice.*
5. *That in any case and in view of the matter, action of Ld. CIT(A) in sustaining the action of Ld. AO in making addition of Rs.16,31,750/- by treating it as alleged unexplained investment in property u/s 69, is bad in law and against the facts and circumstances of the case.*
6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in rejecting the additional evidences filed by assessee and that too without appreciating the facts and circumstances of the case.*
7. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B and 234C of Income Tax Act, 1961.*
8. *That the appellant craves for leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

2. Further, the assessee has also filed the following additional grounds of appeal:-

1. *“That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order and that too without assuming jurisdiction as per law and without complying with mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.*

2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in reopening of the assessment of assessee and that too without recording valid reasons as envisaged under the law and erred in passing the impugned reassessment order without obtaining valid sanction approval given by Ld. Pr. CIT u/s 151 are not valid in the eyes of law.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned reassessment order u/s 147/144 even though no notice u/s 148 has been served on the latest available address of the assessee within the statutory allowable period as per law which is bad in law.*
4. *Since the above grounds purely legal and do not require fresh facts to be investigated and goes to the root of the matter, it is prayed that it may please be admitted in view of the Hon'ble Supreme Court decision in the case of NTPC Limited 229 ITR 383.”*

3. Facts giving rise to the present appeal are that in this case, the Assessing Officer (“AO”) received AIR information regarding purchase of an immovable property amounting to Rs.38,65,000/- by the assessee during the Financial year 2008-09 relevant to Assessment Year 2009-10. The AO issued verification letter but no compliance was made by the assessee. Subsequently, the case was re-opened u/s 147 of the Income Tax Act, 1961 (“the Act”). The notice u/s 148 was issued on 21.03.2016 on the given address through registered post and it is recorded by the AO that the same was duly served upon the assessee. In response to that notice, no compliance was made by the assessee. Therefore, the AO issued various notices u/s 142(1) of the Act. However, there was no compliance by the assessee. Thus, the AO made addition of sale consideration

of immovable property of Rs.38,65,000/- and payment of stamp duty of Rs.1,93,250/-, totaling to Rs. 40,58,250/- as unexplained investment. Accordingly, the income of the assessee was assessed at Rs.40,58,250/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee thereby, he sustained the addition to the extent of Rs.16,31,750/-.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. At the outset, Ld. Counsel for the assessee submitted that he has taken various grounds including additional grounds against the validity of issue of re-opening of assessment. He submitted that the assessee did not receive any notice u/s 148 of the Act. Further, he submitted that before lower authorities, it was categorically stated that the money was received as gift from the relatives. However, this claim of the assessee was rejected without verifying the same. He submitted that the assessee is open to verification at the end of the AO regarding genuineness of the claim of the assessee related to the gift received from his relatives.

7. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

8. I have heard Ld. Authorized Representative of the parties and perused the material available on record. Considering the material available on record and the submissions made by the Ld. Counsel for the assessee that immovable

property was purchased out of gifts received from relatives. It is also contended that the gifts are genuine and the assessee is open for verification of the same. Therefore, I deem it proper and to sub-serve the principle of natural justice, hereby set aside the impugned order and restore the assessment to the file of the AO to frame assessment afresh after verifying the claim of the assessee. Regarding genuineness of gifts and also of legal plea regarding validity of re-opening of assessment, it would be open to the assessee that he may agitate the same before the assessing authority, if so advised. Thus, Grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 15th June, 2023.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI