

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 1961 /DEL/2022**  
**[Assessment Year: 2011-12]**

Simple Singh, 3/203, Shardha Puri, Meerut-250001. PAN- AWMP57877F	<u>Vs</u>	Income-tax Officer, Ward-2(5), Meerut
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	<b>Sh. R.P. Narang, Adv. &amp; Sh. R.K. Jain, Adv.</b>	
<b>Department represented by</b>	<b>Shri Om Parkash</b>	
<b>Date of hearing</b>	<b>26.06.2023</b>	
<b>Date of pronouncement</b>	<b>30.06.2023</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 13.07.2022, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

*“1. In view of facts, circumstances and evidences placed on record, the learned Commissioner of Income Tax (Appeals) NFAC is erred in law and otherwise on facts holding and relied upon the order passed by the Assessing Officer mentioning therein “The assessment order itself mentions the efforts made by AO” is most arbitrary and uncalled for because in-spite of request made by the Appellant/Assessee in her written arguments asking for the virtual attendance, the order passed by learned CIT(Appeals)-NFAC without giving an opportunity to explain her claim or controvert the order is most arbitrary, uncalled for the order so passed is liable to be annulled.*

2. *In view of facts, circumstances and evidences placed on record, the ld. CIT (Appeals)-NFAC did not bother to verify from the record whether the notices said to have been sent through speed post have actually been served upon the appellant/assessee or remained un-served in-tern the Assessing Officer did not provide any material to Appellant/Assessee to controvert her case. The order passed by the CIT(A)-NFAC is restless order liable to be annulled.*

3. *In view of facts, circumstances and evidences placed on record, the ld. CIT (Appeals)-NFAC was not justified in rejecting the claim of Appellant/Assessee that the investment in purchase of property duly appear in Balance Sheet made part of Return filed duly uploaded on Govt. Portal. The Appellant/Assessee is being punished on the clear negligence of the part of Assessing Officer that the Return could not be located on portal whereas it is an established facts the Appellant/Assessee is filing her Return regularly for more than two decades.*

4. *Without prejudice to above grounds while discussing the investment part in purchase of property the ld. CIT (Appeals)-NFAC ignore the facts on record, the brought forward cash balance as per Return filed along with Balance Sheet immediate of preceding year has even been not considered and whole part of investment in property was taxed as income for the year under appeal is most arbitrary and uncalled for, the addition so made is liable to be deleted.*

5. *The Appellant/Assessee craves leave to take additional grounds of appeal before or at the time of hearing of the appeal and/or modify any of the above grounds.”*

2. The facts giving rise to the present appeal are that in this case assessment was reopened by issuing notice u/s 148 of the Income-tax Act, 1961 (in short the “Act”). In response to the notice there was no compliance on the part of the assessee. Therefore, a show cause notice u/s 144 of the Act was issued on 11.12.2018 affording last opportunity to the assessee. Thereby the AO called upon the assessee to explain regarding purchase of property amounting to INR

35,00,000/- during the FY 2010-11 relevant to the AY 2011-12. However, no explanation was given by the assessee. Therefore, the AO made addition of Rs. 37,35,000/- u/s 69 of the Act being unexplained investment. Hence, the AO assessed income at Rs. 45,50,650/-. Aggrieved against this the assessee preferred appeal before learned CIT(Appeals), who also dismissed the appeal and sustained the impugned addition. Now the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal learned counsel for the assessee vehemently argued that notice u/s 148 of the Act was not received by the assessee. He further reiterated the submissions as made in the written submissions, as reproduced below:

*“The present appeal arise against the order passed by the CIT(Appeals), NF AC, Delhi filed by appellant/assessee against the order of Assessing Officer dated instituted on 13.02.2020 dismissing the appeal the order so passed by the Id. CITCA), bears following drawbacks/shortcomings, the para-wise explanation are for adjudication before the Hon'ble Bench.”*

<u><b>As per CIT(A), his observation thereby not accepting our claim</b></u>	<u><b>Objection/explanation argued by us in appeal proceedings.</b></u>
<i>Para No. 7 of CIT(A) order <u>Decision:</u></i>	
<i>In the given facts, it is evident that notices u/s 142(1) were sent at the correct address &amp; duly served. AO has made all attempts to issue notice at all known addresses. The assessment order itself mentions the efforts made by the AO. There is no doubt that there is only one Simple Singh residing at 3/203, Shraddhapuri, but she choose to remain silent during the proceedings and want to take all technical pleas in appeal without</i>	<i>(i) The Id. CIT(A) passed the order and rejecting the reiterated request by the appellant without appreciating our claim the notices as mentioned by the Id. AO were never served upon the assessee/appellant at all, as much as while inspecting the file of Id. Assessing Officer by the authorized representative Mr. R. K. Sharma Advocate, the Ld. AO could not provide the valid Ack. receipt, the Id. CIT(A) did never mentioned</i>

<p><i>fulfilling her legal duties. Appellant choose not to comply with these legal notices without any reasonable cause/valid reasons. Thus, Ground of appeal 1 to 3 on service of notice &amp; legality of proceedings are dismissed.</i></p>	<p><i>anything in this regards in impugned order.</i></p> <p><i>(ii). The Id. CIT(A) did not mention in his order inspite of our request /prayer: - had the AO would have made some efforts to locate the assessee/appellant this would not been the story.</i></p> <p><i>(iii). The Id. CIT(A) did never appreciate the facts the basic notice u/s 148 was issued in the name of Shri Simple Singh S/o Maninder Pal Singh in place of actual name Smt. Simple Singh D/o Rajpal Singh duly appearing in income tax portal as also on the copy of sale deed which has been made the main tool to proceed u/s 147. It is expected from the department the basic notice ought to have been issued in the right name and right address</i></p>
<p><u><i>Para 8 of CIT(A) Order</i></u></p> <p><i>Kindly refer to page no. 23 of our appeal originally filed i.e. Order of CIT(A) filed with appeal the last para reproduced as below</i></p> <p><i>In the given facts and circumstances, I consider that the appellant has failed to explain the source of cash investment in the property. Hence, the AO was justified to make the addition u/s 69 of LT. Act. Therefore, Ground of appeal 4 to 7 are dismissed. (The complete para can be viewed from the order of CIT (A) placed on record)</i></p>	<p><i>i. The appellant/assessee is a regular assessee for last more than ten years, the return income of appellant/assessee always accepted in past. The return filed by her consist of copy of balance sheet that includes details of assets movable or immovable held by her at the close of accounts, the relevant page of ITR duly uploaded on govt. portal for the year under reference is placed on record. Since the return was filed showing profit above 8% we were not obliged to get our account audited the stand of CIT(A) is not a good ground to reject our clai</i></p> <p><i>ii. On point of investment hon'ble's attention drawn on para 3 of our written submission dated 12.04.2022 now placed at page no. 33 of appeal filed, copy of balance sheet forming part of ITR-4 also enclosed with this submission the Id. CIT(A) did not bother to appreciate and rejected the claim stating the balance sheet is not audited though the same was not at all require</i></p> <p><i>iii. Attention again invited on our written submission as counter comments to assessing officer dated 04.06.2022, the Id. CIT(A) was particularly prayed to direct us to ask any</i></p>

	<i>further information from us and allow us to give a virtual meeting to apprise our claim which was totally ignored by him is bad in law and arbitrary.”</i>
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4. The learned counsel for the assessee submitted that ex facie the notice was issued in the name of wrong person as the name of assessee is stated to be Shri Simple Singh. Hence there was mention of wrong gender. Further, in respect of merit of additions, he submitted that the assessee has duly disclosed assets relating to immovable property. He submitted that the ITR was uploaded to the government portal, hence it is not a case of unexplained investment.

5. On the other hand, learned DR submitted that all these objections were taken before the learned CIT(Appeals) who has considered and even a finding of fact in para 7.1 is given. Further, on merit of the case he submitted that the assessee failed to explain the source of investment before the learned CIT(A), hence there is no infirmity into the order of the learned CIT(Appeals).

6. I have considered the rival contentions and perused the material available on record. Undisputedly the case was reopened by the Revenue on the ground of investment made in the immovable property and there was no response from the assessee's side. The assessment was framed ex parte to the assessee. Before learned CIT(Appeals) the assessee has given certain evidences, which go to the root of the case. The assessee was having source of income and supporting

evidences relating to agricultural income has been filed. Purchases were made out of gift received and also past savings. The donors have given their affidavits. The learned CIT(Appeals) without verifying the same sustained the additions. Therefore, in my considered view the addition without verification is unjustified. The lower authorities ought to have verified the evidences submitted by the assessee. Therefore, the impugned order is hereby set aside. The assessment is restored to the file of the AO itself. The AO would verify the source of purchase of immovable property and if it is found that the assessee was having sufficient funds available for making investment into the immovable property, he would delete the addition. Grounds raised in this appeal are allowed for statistical purposes.

7. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 30<sup>th</sup> June, 2023.

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

**\*MP\***

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**