

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 9535 /DEL/2019
[Assessment Year: 2011-12]

Jindal Construction, Pcket A-8/77, Kalkaji Extension, New Delhi-110019.	<u>Vs</u>	Income-tax Officer, Ward-32(2), New Delhi.
PAN- AACFJ9618F		
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Shri Om Parkash	
Date of hearing	27.06.2023	
Date of pronouncement	30.06.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-32, New Delhi, dated 26.11.2019, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

“1. *That on facts and in law, the Ld Commissioner of Income Tax (Appeals) 32 erred in upholding the addition made by the AO without fully appreciating the facts and contention of the appellant and therefore, the Order of the Ld. Commissioner of Income Tax (Appeals) is bad in law.*

2. *That on the facts and in the circumstances of the case and in Law, the Ld AO opened the case u/s 147 against which the appellant filed an objection but the Ld. AO disposed off the objection just few days before the passing of the order and not afforded proper opportunity of being heard which is against the natural law and justice.*
 3. *That on the facts and in the circumstances of the case and in Law, the Ld. CIT (A)-32 and AO has not understood the nature of transaction and made the addition arbitrarily under the head income from other sources of Rs. 25,00,000/-. The appellant received an interest free security deposit of Rs. 25,00,000/- which is to be refunded to the developer after the completion of the project to the satisfaction of all the stakeholders and the project is still not completed.*
 4. *The appellant craves leave to add, to alter, vary, modify or otherwise amend the grounds before the appeal is heard and finally disposed of.*
2. At the time of hearing no one attended the proceedings. It is seen from the record that no one has been attending the proceedings on behalf of the assessee for many dates. The assessee has not filed any application seeking adjournment. Therefore, the appeal is taken up for hearing in the absence of assessee and is being decided on the basis of material available on record.
3. The facts giving rise to the present appeal are that the case of the assessee was reopened on the basis that the assessee had not filed any return of income, though it entered into transaction of large magnitude. Therefore, the case of the assessee was reopened u/s 147 of the Income-tax Act, 1961 (the "Act"). A notice

u/s 148 of the Act was issued and served upon the assessee. In response, the assessee filed return its of income on 10.4.2018 vide acknowledgement no. 608871721100418 declaring income at Nil. Thereafter a notice u/s 143(2) was served upon the assessee. In response thereto Shri Pradeep Jindal, CA/AR attended the proceedings. After considering the submissions the AO made addition of Rs. 25,00,000/- being security deposit treating to be forfeited by the assessee received from the Developer. Aggrieved against this the assessee preferred appeal before the learned CIT(A) who after considering the submissions sustained the addition. Now the assessee is in appeal before this Tribunal.

4. Apropos to the grounds of appeal the written submissions filed by the assessee are on record. For the sake of clarity the written submissions of the assessee are reproduced as under:

“FACTS OF THE CASE,

The case was reopened u/s 147 and accordingly notice u/s 148 was issued. In response of that the return of the Finn was filed electronically vide ack no. 608871721100418 dated 10.04.2018 at an NIL Income.

The appellant filed an objection against the initiation of reopening proceedings u/s 147 vide letter dated 09.05.2018 which has been disposed off by the ld. AO vide letter dated 14.12.2018 and send on email on 16.12.2018 at 8.47 PM and passed the assessment order u/s 1471143(3) on 28.12.2018 by making an addition of Rs. 25,00,0001-.

The appellant entered into a collaboration agreement for development of its land and received a interest free refundable security of Rs. 25,00,000/- from the

developer. The ld. AO has made the addition of this refundable security deposited of Rs. 25,00,000/-.

Submission Ground no. 1

That the Hon'ble CIT(A) has erred in upholding the addition made by the AO without fully appreciating the facts. The ld. AO vide his Assessment order dated 28.12.2018 has mentioned at page no. 3 at para 3 that a notice u/s 148 dated 31.03.2018 was issued asking the assessee to file return of income for assessment year 2011-12 within 30 days of service of the said notice. However, it was noticed that the same remained uncomplined. Which is very much wrong whereas the appellant has duly complied this notice by filing its Income Tax return in response to notice u/s 148 vide Ack no. 608871721100418 dated 10.04.2018. We are unable to understand the compliance procedure of this notice. The Ld. AO as well as the CIT(A) ignored the above facts and passed the orders mechanically

Submission Ground no. 2

*That we have filed an objection against the initiation of reopening proceedings under section 148 vide letter dated 09.05.2018 which has been disposed of by the ld. AO vide letter dated 14.12.2018 after a lapse of more than 7 months which was send on our email id on 16.12.2018 at 8.47 PM. Then the Ld. AO passed an Assessment Order u/s 1471143(3) within a period of 12 days from the disposal of objection which is against the natural law and justice. The sufficient opportunity was not afforded and order was passed in haste. Ld. AO has not even mentioned the disposal of this objection in his order which is also against the natural law and justice. This matter is well settled in the case of Smt. **Kamlesh Goel V s The ITO (ITAT Delhi) Appeal No. ITA No. 5730/DEL/2017.** In which it is decided the AO should allow four weeks' time to assessee after rejection of objection. The bone of contention is as to whether the AO has rightly framed the impugned order within)6 days of disposing of the objection of the assessee.*

The answer is given by the coordinate bench in the case of Metaplast Engineering Pvt. Ltd. in ITA no. 5780/DEL/2014 wherein the coordinate bench

has considered the judgment of the Hon 'ble Bombay High Court in the case

of

Bharat Jayantilal Patel 378 ITR 596. The relevant finding reads as under:

" Further in view of the decision of the Hon'ble Bombay High Court in the case of Bharat Jayant Patel (Supra), learned AO should have allowed four weeks' time to the assessee to seek their legal remedies after rejection of the objection of the assessee. In view of the fact that the AO has disposed of the objections of the assessee on 22.11.2011 and passed the Assessment order on 19.12.2011, it is clear no such time was granted to the assessee".

In this case also the objection filed by the appellant was disposed of by the Ld. AO on 16.12.2018 and passed the order on 28.12.2018 which is within 12 days of disposal of the objection. The Ld. AO has not followed the procedure of law. Hence the order passed by the Ld. AO deserves to be quashed

Submission Ground no. 3

That the addition of Rs. 25,00,0001- on account of refundable security deposit received from the developer of the complex which is to be refunded after the completion of the project to the satisfaction of all the stakeholders. This amount is still refundable as the developer has not completed the project and even not applied for the completion certificate of the project to the appropriate authority which has been confirmed by the Director of the Developer Mis PNV Construction Pvt. Ltd. in the statement given under section 131. The statement recorded of Sh. Prem Paul Verma Director of Mis PNV Construction Pvt. Ltd. has been mentioned by the Ld. AO in his order at page no. 1 & 2. The security was received to be refunded to the developer only after the completion of the project in all respect. The security amount received from the developer is only to be refunded when the project is completed in all respect. The appellant is not in a position to sell his portion in this complex as completion certificate is not received from appropriate authority. The buyer in this project requires completion certificate before entering into a purchase agreement that's why we have not yet refunded security deposit of Rs. 25,00,0001-. We will refund the security deposit as and when completion certificate will be received. It is also very much clear that

security received was merely a liability and it has to be returned and the developer also asked to return but the appellant has not returned the security in order to be sure on the quality of construction and maintenance of the building which has been agreed to be on the part of the developer at the cost shared by the appellant but it has never been treated as the receipt in the hands of the appellant.”

5. Learned Sr. DR on behalf of the Revenue opposed the submissions and supported the orders of the authorities below. He submitted that it is a clear cut case of having income from other sources as the security deposit was received during F.Y. 2003-04 and even after lapse of more than seven years the security deposit was not refunded.

6. I have heard the learned DR and perused the material available on record. Apropos to ground nos. 1 & 2 the contention of the assessee is that reopening is not justified and contrary to the settled position of law. There is no dispute with regard to the fact that the assessee had entered into a transaction with the Developer. It is also not disputed that assessee had not filed return of income. The return of income was filed in pursuance to the notice issued u/s 148 of the Act. Therefore, the grounds taken by the assessee, lack on merits. Same are dismissed.

7. Ground No. 3 is on merit. There is no dispute with regard to the fact that the impugned security deposit was taken way back in FY 2003-04. Merely stating that the Developer had not provided completion certificate, no other material suggesting that there was any lapse on behalf of the Developer has been brought on

record by the assessee. In the absence of such material I do not see any reason to interfere in the finding of the authorities below. Same is hereby affirmed.

8. Appeal of the assessee is dismissed.

Order pronounced in open court on 30th 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**