

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH JABALPUR**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No. 47/Jab/2023
Assessment Year: 2013-14

Kailash Chand Agrawal, 51, Pili Building Company Bag, Satna. PAN : AJLPA 3500B	Vs.	Income Tax Officer, Ward-1, Satna
(Appellant)		(Respondent)
Appellant by	Shri Dhiraj Ghai, CA	
Respondent by	Shri Ravi Mehrotra, Sr. DR	
Date of hearing	10/07/2023	
Date of pronouncement	21/07/2023	

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.:

This appeal is preferred by the assessee against the order dated 10.02.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi for Assessment Year (AY) 2013-14.

2. The brief facts of the case are that the return of income was filed reflecting taxable income of Rs.18,15,510/-. The assessee's case was selected for limited scrutiny for the reason "Capital Gains consideration in ITR is less than sale of property reported in AIR, large cash deposit". Thereafter, the assessment was completed at an income of Rs.49,67,801/- after making an addition of Rs.7,51,520/- on account of capital gains and further addition of Rs.24,00,771/- on account of undisclosed investment in house property.

3. Aggrieved, the assessee approached the NFAC, challenging the various additions made. The NFAC dismissed the assessee's appeal on

the ground that there was non-compliance on the part of the assessee on the dates, when the assessee was required to submit various details/responses. Now, the assessee has approached the ITAT, challenging the summary dismissal by the NFAC and has raised the following grounds of appeal:

"1. On facts and circumstances of the case the CIT appeal erred in not providing adequate opportunity to assessee so as to present his version and reply to additions made by AO hence the CIT appeal order dated 10.02.2023 in lieu of not providing adequate opportunity is against the Supreme court order in the case of Sona Builders V/S CIT and accordingly need to be quashed.

2. The CIT appeal erred in confirming the additions made by A.O in the assessment order in spite of the fact that the relevant additions were beyond the scope of limited scrutiny and hence were against the law and natural justice. Accordingly the assessment order may kindly be quashed.

3. The CIT appeal erred in not considering the assessee's submission as made before AO in assessment proceeding viz defects in D.V.O both reports including that of difference in measurement of construction in ground, first and second floor, (in new building) and leaving one trench of development in sold building besides higher rates adopted for valuation etc. This made D.VO reports defective & being based on pure presumption and assumption and hence the addition of Rs 751520/- and of Rs 24,00,771 may kindly be deleted.

4. Considering the fact that addition Rs 751520/-and of Rs 24,00,771-on account of difference in cost of construction and capital gain working was made by the Id. AO solely on the basis of valuation reports of Id. DVO hence the Id. CIT(A) should not have not sustained the addition Rs.751520/-and of 24,00,771 made on account of overstatement of cost of construction building and in new wrong capital gain working for sold house. Henceforth the additions of Rs 751520/-and of Rs 24,00,771 may kindly be deleted.

5. The CIT (A) order dated 28/06/2018 is bad in law hence may kindly be cancelled."

4. The Id. Authorized Representative submitted that the first date for hearing was fixed for 10.05.2019 and the notice for hearing was issued by the Id. CIT(A), Jabalpur and the hearing was physical in nature. However, on that date, the Id. CIT(A) was travelling to Sagar and was not in Jabalpur and, therefore, no hearing took place. It was further submitted by the Id. A.R. that the next hearing was fixed for 31.12.2020 and on that day the assessee himself was suffering from Corona and, therefore, he was not in position to access the computer and furnish a reply. It was submitted that even the staff of the assessee was on leave due to the Corona pandemic. It was further submitted that the third date for hearing was on 01.11.2022 but on that date only a window opened on e-portal but no notice was being shown on the portal requiring the assessee to submit a reply. Therefore, there was no non-compliance on the part of the assessee and it was prayed that the assessee should be provided with one more opportunity to explain the case.

5. Per contra, the Id. Sr. D.R. supported the order of the Assessing Officer but also submitted that he had no objection to the assessee being provided with another opportunity.

6. We have heard both the parties and have also gone through the records. It is seen that the Id. A.R. has suitably explained the reason for non compliance before the NFAC on the part of the assessee and, therefore, on the facts of this case, it will be fitness of things if the assessee is afforded another opportunity to explain and furnish the

relevant details. Accordingly, we restore the file to the Office of the Id. First Appellate Authority with a direction to readjudicate the issue on merits and pass a speaking order thereafter, after providing adequate opportunity to the assessee to present his case. We also direct the assessee to fully cooperate in the proceedings before the NFAC.

7. In the final result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 21/07/2023
In accordance with Rule 34(4) of the I.T.A.T. Rules.)

Sd/-
(ANADEE NATH MISSHRA)
Accountant Member

Sd/-
(SUDHANSHU SRIVASTAVA)
Judicial Member

Dated: 21/07/2023
Aks

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Jabalpur

Asstt. Registrar