

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "H" DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.7154/DEL/2019  
Assessment Year 2011-12

Anand Pershad Jaiswal 54, Ring Road, Lajpat Nagar-3 New Delhi	v.	DCIT Central Circle-4 New Delhi.
TAN/PAN: ADRPJ2549M		
(Appellant)		(Respondent)

Assessee by:	Shri Deep Chand Garg, CA		
Department by:	Shri Amit Katoch, Sr.DR		
Date of hearing:	16	08	2023
Date of pronouncement:	16	08	2023

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-XXIII, New Delhi ['CIT(A)' in short] dated 28.06.2019 arising from the assessment order dated 21.12.2018 passed by the Assessing Officer (AO) under Section 147 r.w. Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. The grounds of appeal raised by the assessee read as under:

*"1. That the Commissioner of Income Tax (Appeals) ('CIT(A)'] erred on facts and in law in not holding that the assessment order passed by the assessing officer under section 147/143(3) of the Income Tax Act, 1961 ('the Act') is beyond jurisdiction, illegal, bad in law and void-ab-initio.*

*2. That the CIT(A) erred on facts and in law in upholding validity of re-assessment proceedings without appreciating that the same was initiated without there being 'reason to believe that income of the*

*appellant had escaped assessment.*

*3. That the CIT(A) erred on facts and in law in not appreciating that reassessment proceedings under section 147 of the Act having been initiated without having any new material and information whatsoever were available with AO, on the basis of which, he has reasons to believe that income of appellant had escaped assessment.*

*4. That the CIT(A) erred on facts and in law in not appreciating that the reassessment proceedings having been initiated on the direction of superior authority and without any reason to believe that income of appellant had escaped assessment.*

*5. That the CIT(A) erred on facts and in law in not appreciating that the reassessment proceedings having been initiated by changing of opinion subsequent to quashing of assessment made u/s 153A by Ld. CIT(A) 23.*

*6. That the CIT (A) erred on facts and in law in not appreciating the facts that the AO has also filed an appeal on the same matter with Hon'ble ITAT against the order passed u/s 153A, thereby he were perusing two proceedings at the same time on the appellant, which is not permissible in law.*

*7. That the CIT (A) erred on facts and in law in denying a proper opportunity to the appellant of being heard before passing his order. In fact, AR of appellant has filed an application of adjournment on 20th June 2019, due to non-availability of required documents being requested from assessee, as the appellant is a NRI, but the order has been passed without giving any further opportunity of being heard.”*

3. When the matter was called for hearing, the Id. counsel for the assessee submitted at the outset that the case was reopened under Section 147 of the Act to assess an amount of Rs.12,50,000/- as deemed dividend under Section 2(22)(e) of the Act. In this regard, the Id. counsel submitted that amount so received by the assessee is not in the nature of any gratuitous loan but has been received as a part consideration for sale of property at Lajpat Nagar to M/s. Blossom Investment Pvt. Ltd. where the assessee is also a shareholder. The Id. counsel pointed out that certain fresh evidences have been placed on record under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 to support is contention on merits. The Id. counsel next submits that the assumption of jurisdiction under Section 147 is also under challenge. The Id. counsel thus pleaded that the matter may be remitted back to the file of the

Assessing Officer for fresh adjudication in accordance with law after making factual verifications as may be required.

4. The Id. DR for the Revenue supported the order of the lower authorities but however expressed no reservations for the proposed remit to the file of the Assessing Officer for re-adjudication of the whole issue.

5. On appraisal of the assessment order and the first appellate order and also in the light of the material placed before us, we feel that it will be in the fitness of things to restore the issue on merits and jurisdiction to the file of the Assessing Officer for fresh adjudication in accordance with law after giving proper opportunity to the assessee. We thus do not express any opinion on merits and restore the matter back to the file of the Assessing Officer.

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

**Order was pronounced in the open Court on 16/08/2023.**

Sd/-  
**[SAKTIJIT DEY]**  
**VICE PRESIDENT**

DATED: **/08/2023**

*Prabhat*

Sd/-  
**[PRADIP KUMAR KEDIA]**  
**ACCOUNTANT MEMBER**