

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCHES, ALLAHABAD**

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER
AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No. 67/Alld/2023
Assessment Year: 2011-12**

Mr. Devendra Singh, 166A, Puravaldi Kydganj, Allahabad-211003,U.P.	v.	The Deputy Commissioner of Income Tax, Range-1, Allahabad, U.P.
PAN:AEXPS6329H		
(Appellant)		(Respondent)

Assessee by:	None
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	04.09.2023
Date of pronouncement:	05.09.2023

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, arising out of the appellate order passed by learned Commissioner of Income-tax(Appeals) (National Faceless Appeal Centre (NFAC), dated 23.03.2023 for the assessment year 2011-12 (DIN & Order No. ITBA/NFAC/S/250/2022-23/1051166602(1)) , which appeal in turn has arisen out of the assessment order dated 30.12.2016 passed by ld. Assessing Officer(hereinafter called "the AO") u/s 143(3) read with Section 147 of the Income-tax Act, 1961.

2. The assessee has raised following grounds of appeal in Memo of Appeal filed with Income Tax Appellate Tribunal, Allahabad, which reads as under:-

"1. That in any view of the matter assessment framed u/s 143 (3)/147 of the act by order dated 30.12.2016 on income of Rs.71,93,910/- is bad both on the fact and in law.

2. That in any view of the matter the proceeding as initiated u/s 147 of the act is not a valid proceeding since there was no escapement of income nor any independent material was brought on record nor there was any information with the department that there was any concealment of income and simply on the basis of borrowed satisfaction from Audit department proceeding was initiated hence the entire assessment framed u/s 143(3)/147 liable to be declared void abinitio.

3. That in any view of the matter the proceeding u/s 147 of the act is not correct and simply on the basis of audit objection the same was initiated which is not correct when the information duly disclosed to the department in the return filed originally u/s 139 (1) as well as details filed in the original assessment proceeding to which speaking order was passed u/s 143 (3) dated 14.12.2012 hence the very basis of initiation of proceedings are bad in Law.

4. That in any view of the matter the learned CIT Appeal was wrong in passing order ex-parte without providing reasonable opportunity of assessee and the order is not speaking order in the eye of law.

5. That in any view of the matter the disallowance of exemption claimed u/s 54F of the act amounting to Rs.27,46,978/- as added by the assessing officer is not correct when the same was already claimed in the original return and even assessment was framed u/s 143(3) on the basis of details and evidences filed at length hence disallowing the exemption u/s 54F of the act without bringing any positive material on record in the garb of section 147 of the act by the assessing officer is highly unjustified.

6. That in any view of the matter investment in construction of property duly disclosed in books of account as well in financial statement in the original return itself and no independent/new material was brought on record by the department to establish that assessee has made false claim u/s 54F of the act or investment in construction of property was made from undisclosed sources as alleged hence the addition made on conjecture and surmises by then assessing officer is highly unjustified.

7. That in any view of the matter interest charge under different section by assessing officer is highly unjustified.”

3. The brief facts of the case are that the assessee filed his original return of income on 29.09.2011 , declaring total income of Rs. 42,46,330/-. The case of the assessee was selected for framing scrutiny assessment through CASS. Statutory notices were issued and assessment was completed by AO under section 143(3) on 14.12.2012 at Rs. 44,46,330/-. On perusal of assessment record, it was observed

that the assessee sold land at Civil Lines, Allahabad at Rs. 72,25,000/- , and the assessee has claimed benefit of indexed cost of acquisition as well as exemption under section 54 of the Act. The AO observed that during the course of assessment proceedings, no queries were raised regarding the new asset. The notice under section 148 was issued by AO with prior approval of learned Pr. Commissioner of Income Tax, Allahabad , on 11.03.2016. The reasons recorded for reopening of the concluded assessment were provided to the assessee. The assessment was reopened within four years from the end of the assessment year. The assessee was asked to explain complete detail of exemption under section 54F as well as detail of computation of long term capital gain. The AO observed that complete details are not filed by the assessee as only few vouchers, bills in support of expenses claimed to have been incurred for construction were provided. The map sanctioned by the Allahabad Development Authority was also not filed. Thus, the AO was of the view that assessee is not entitled to claim exemption under section 54F, which led to the AO to make additions to the tune of Rs. 27,46,978/-.

4. Aggrieved by assessment framed by the AO, the assessee filed first appeal with ld. CIT(A). During the course of appellate proceedings , the learned CIT(A) issued following notices which were sent to the registered email ID of the assessee at ravindratripathiadv@gmail.com:-

S. No.	Date of notices issued	Date for submission
1.	30/03/2019	11/04/2019
2.	31/01/2020	12/02/2020
3.	23/12/2020	07/01/2021
4.	15/02/2021	02/03/2021
5.	11/10/2021	26/10/2021
6.	07/12/2021	22/12/2021
7.	13/01/2022	28/01/2022
8.	03/03/2022	18/03/2022
9.	11/10/2022	20/10/2022
10.	12/12/2022	27/12/2022

11.	24/02/2023	07/03/2023
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But there was no compliance on behalf of the assessee. The ld. CIT(A) passed an ex-parte appellate order. The ld. CIT(A) adjudicated the issue against the assessee by upholding the reopening as valid under Section 147 / 148 of the Act . The ld. CIT(A) further observed that the assessee has not filed complete bills and vouchers relating to construction of new house as well as sanction/approval of A.D.A. were not filed, and hence additions were confirmed by ld. CIT(A).

5. The assessee has now filed an appeal before Tribunal, but none appeared on behalf of the assessee when the appeal was called for hearing and no adjournment application was also filed by the assessee . From the statement of fact, we have observed that the assessee has challenged the proceedings under section 147 on the grounds that reopening of the concluded assessment cannot be made on the basis of audit objections. The assessee has also explained that the assessee has debited capital account with the investments in the construction of the property as it was personal residential asset and not business asset. The evidences are not filed with Tribunal by the assessee , as no paper book is filed by the assessee. The assessee has raised as many as eight grounds of appeal, of which Ground No. 4 deals with that ld. CIT(A) has passed an ex-parte order without giving sufficient opportunity and the order is a non speaking order. The ld. Sr. DR fairly submitted that the matter can go back to the file of ld. CIT(A) for fresh adjudication

6. We have considered rival contentions and perused the material on record. We have observed that the assessee filed his original return of income on 29.09.2011 , declaring total income of Rs. 42,46,330/-. The case of the assessee was selected for framing scrutiny assessment through CASS. Statutory notices were issued and assessment was completed by AO under section 143(3) on 14.12.2012 at Rs. 44,46,330/-. On perusal of assessment record, it was observed by Revenue that the assessee sold land at Civil Lines, Allahabad at Rs. 72,25,000/- , and the assessee

has claimed benefit of indexed cost of acquisition as well as exemption under section 54 of the Act. The AO observed that during the course of assessment proceedings, no queries were raised regarding the new asset. The notice under section 148 was claimed to have been issued by AO with prior approval of learned Pr. Commissioner of Income Tax, Allahabad on 11.03.2016. The reasons recorded for reopening of the concluded assessment were claimed by AO to have been provided to the assessee. The assessment was reopened within four years from the end of the assessment year. The assessee was asked to explain complete detail of exemption under section 54F as well as detail of computation of long term capital gain. The AO observed that complete details are not filed by the assessee as only few vouchers, bills in support of expenses claimed to have been incurred for construction were provided. The map sanctioned by the Allahabad Development Authority was also not filed. Thus, the AO was of the view that assessee is not entitled to claim exemption under section 54F, which led to the AO to make additions to the tune of Rs. 27,46,978/-. The ld. CIT(A) passed an ex-parte order as none appeared before ld. CIT(A) despite 11 notices issued by ld. CIT(A) through email sent to registered email id of the assessee. The ld. CIT(A) upheld the reopening of the assessment u/s 147/148 on legal grounds as well on merits of the additions as no evidences were filed before ld. CIT(A). The assessee has filed an appeal before Tribunal, but none appeared when this appeal was called for hearing before the Bench , nor any adjournment application was filed. No paper book is filed by assessee before Tribunal. We have observed that ld. CIT(A) has passed an *ex parte* appellate order as assessee did not appear before ld. CIT(A). The assessee has now raised as many as eight grounds of appeal and claim is made that the expenditure towards construction was debited to capital account as it was an investment in residential house and not business asset , but no evidences are filed. The assessee has challenged the legal validity of reopening of assessment under section 147. We have observed that the assessee did not appear before ld. CIT(A) and it is an *ex parte* order. We have also observed that as per section 250(6), the ld. CIT(A) was

required to adjudicate the issues on merits, in accordance with law. The ld. CIT(A) powers are co-terminus with the power of the AO and ld. CIT(A) could have called for the assessment record as well as make such enquiries as he deemed fit which were necessary for completion of appellate proceedings, but he was required to decide all issues on merits after due application of mind. The ld. CIT(A) has merely dismissed the appeal of the assessee without complying in true letter and spirit the provisions of Section 250(6). The assessee is equally at fault as the assessee did not participated in the appellate proceedings before ld. CIT(A). The Ld. Sr. DR has fairly stated that the matter can go back to the file of ld. CIT(A) for fresh adjudication. Keeping in view the entire facts and circumstances of the case and in the interest of justice, we are inclined to set aside and restore the matter back to the file of ld. CIT(A) for fresh adjudication of all the issues on merits, in accordance with law. We clarify that we have not commented on the merits of the issue. Needless to say that powers of ld. CIT(A) are co-terminus with the powers of the AO. The Ld. CIT(A) shall give proper and adequate opportunity of being heard to the assessee, in accordance with principles of natural justice and in accordance with rules and schemes framed by Department. The assessee is directed to co-operate and submit all necessary information/explanation/evidences before ld. CIT(A) in set aside remand appellate proceedings . Further, ld. CIT(A) will pass the appellate order, keeping in view provisions of section 250(6) of the Act. The appeal of the assessee is allowed for statistical purposes. We order accordingly.

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

Order pronounced on 05/09/2023 in Open Court at Allahabad, U.P..

Sd/-

**[ABY T. VARKEY]
JUDICIAL MEMBER**

DATED: 05/09/2023

Sh

Sd/-

**[RAMIT KOCHAR]
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant – Mr. Devendra Singh, 166A, Puravaldi Kydganj, Allahabad-211003, U.P.
2. Respondent – The Deputy Commissioner of Income Tax, Range-1, Allahabad, U.P.
3. CIT DR
4. CIT
5. The CIT(A)