

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.2127/Del/2023  
Assessment Year: 2016-17

Pinki Gupta,  
11-C/208, Nehru Nagar,  
Ghaziabad,  
Uttar Pradesh – 201002.

Vs ITO,  
Ward-2(2)(1),  
Ghaziabad.

PAN: ADUPG9256F

(Appellant)

(Respondent)

Assessee by	:	Shri Arun Kumar Aggarwal, Advocate
Revenue by	:	Shri Om Parkash, Sr. DR
Date of Hearing	:	06.09.2023
Date of Pronouncement	:	14.09.2023

ORDER

This appeal by the assessee pertaining to Assessment Year 2016-17 is filed against the order of the Id.CIT(A), National Faceless Appeal Centre, Delhi, dated 30<sup>th</sup> January, 2023. The assessee has raised the following grounds of appeal:-

"1. *Because, order of Id. CIT (Appeals) is bad in law and against the facts and circumstances of the case.*

2 *Because, Id, CIT (Appeals) erred in dismissing the appeal summarily on the line of in limine, without providing proper opportunity of being heard as assessee was prevented with sufficient cause in not appearing on the date of hearing in as much no notice of hearing was served/received on address for communication given in appeal memo.*

3 *Because, Id. CIT(A) manifestly wrong in not even considering any of the jurisdictional grounds, thus order is against the provisions of section 250/251 of Act.*

4 *Because, Id, CIT(A) erred in not appreciating the fact Id. AO passed order mechanically/ hurriedly without providing proper opportunity of being heard, wherein neither objection raised/material places considered nor request to provide for relevant material is acceded when law is settled that taxes are to be levied fairly and not to be punitive.*

4 *Because, Id. CIT(A) failed to appreciate that neither jurisdictional notice u/s 148 is valid which is issued merely on borrowed satisfaction nor jurisdictional condition for issuance of notice are complied which is issued without any application of mind of AO/approving authority, thus notice u/s 148 itself is void.*

5 *Because, Id, CIT(A) further failed to appreciate that on merits that addition is made as per premeditated mind but contrary to evidences and explanation placed on record which is against the basic tenet of law.*

*Therefore, it is very respectfully prayed that this Hon'ble Court may kindly be pleased to quash the order of Id. lower authority with the directions as deemed fit or alternatively to hear the matter on other legal/merit grounds."*

2. The facts giving rise to the present appeal are that the assessee has e-filed the return of income declaring an income of Rs.3,45,300/- and has claimed long term capital gains exempt income of Rs.60,40,332/- u/s 10(38) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). On the basis of information received and on the belief that an income of Rs.45,40,900/- had escaped assessment, the AO initiated re-assessment proceedings u/s 147 of the Act and notice u/s 148 of the Act dated 30.03.2021 was issued. The AO made an addition of Rs.45,40,900/- treating the same as unexplained cash credit u/s 68 of the IT Act. Aggrieved by this, the assessee preferred appeal before the CIT(A) who dismissed the appeal *ex parte qua* the assessee.

3. At the outset, the Id. Counsel for the assessee stated that the Id. CIT (A) erred in dismissing the appeal in *limine*, without providing proper opportunity of being heard, as assessee had sufficient cause that prevented the assessee from appearing on the date of hearing inasmuch as no notice of hearing was received at the address for communication given in appeal memo. It was also submitted that the jurisdictional ground was not considered at all by the Id. CIT(A) and the Id.CIT(A) also erred in not appreciating the fact that the Id. AO passed the order mechanically/hurriedly without providing adequate opportunity and without considering the objection raised/material placed. It was, therefore, submitted that another opportunity of hearing may be provided to the assessee before the Id.CIT(A).

4. On the other hand, the Id. DR opposed the submissions of the assessee and supported the orders of the authorities below. He contended that the assessee should not be given the benefit of his own negligence.

5. I have heard the rival contentions and perused the material available on record. There is no dispute with regard to the fact that the Id.CIT(A) has passed the orders *ex parte qua* the assessee. It is the contention of the assessee that the assessee had not received the notice of hearing. Therefore, looking to the facts available on record and also in view of the principles of natural justice, I set aside the impugned order and restore the issue to the file of the Id.CIT(A) for deciding the

same afresh, after providing adequate opportunity of hearing to the assessee. The grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 14.09.2023.

Sd/-

(KUL BHARAT)  
JUDICIAL MEMBER

Dated: 14<sup>th</sup> September, 2023.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi