

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**  
**(DELHI BENCH 'DB' : NEW DELHI)**  
**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER**  
**AND**  
**SH. ANUBHAV SHARMA, JUDICIAL MEMBER**  
**ITA No. 140/AGR/2022**  
**(Assessment Year : 2015-16)**

Surendra Pal Singh Narang 33/264, New Raja Ki Mandi Colony Agra- 282002 Uttar Pradesh PAN : AAFPN8023P	Vs.	DCIT, Circle 1(2)(1), Agra, Uttar Pradesh
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Neeraj Mangla, CA
Revenue by	Sh. Shildendra Shrivastava, Sr. DR

Date of hearing:	29.08.2023
Date of Pronouncement:	29.08.2023

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been preferred by the Assessee against the order dated 16.06.2022 of CIT(A), National Faceless Appeal Centre (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Order No. ITBA/NFAC/S/250/2022-23/1043465493(1) arising out of an appeal before it against the order dated 31.07.2017 u/s 143(3) of I.T. Act, 1961 (hereinafter referred

to as 'the Act') passed by DCIT, Circle-1(2)(1), Agra (hereinafter referred as Ld. Assessing officer or in short Ld. AO).

2. Heard and perused the record.

3. During the course of hearing Ld. AR brought before the Bench the fact that the appellant is a senior citizen aged about 61 years old and filed his return of income for the A.Y. 2015-16 declaring an income of Rs. 1,63,20,870/- including capital gain long term) of Rs. 1,43,56,448/- on the sale of property at Agra. The appellant sold his industrial property at Agra for Rs. 3,62,00,000/-. In the Computation of long term capital gain, the appellant had deducted indexed value of Rs. 32,69,056/- towards amount spent in improvement, construction of shed/building in the said property as reflected in the financials of the relevant years. The appellant filed report of UPSIDC about existence of construction, based on inspection of site made by their officials. In spite of this the Ld. A.O. assessed the income of the appellant at Rs. 1,84,61,113/- by disallowing the said indexed value of construction vide assessment order dated 31.07.2017 passed u/s 143(3) of the Income Tax Act. Thereafter the appellant e-filed an appeal before the Commissioner of Income Tax Appeals which has been on 16.06.2022.

4. Ld. DR has pointed out that when the property was sold, there was no mention in the sale deed of any construction existing on the land.

5. After taking into consideration the facts of the case it appears that before Ld. CIT(A), assessee had relied information he got under RTI upon which remand report was called from Ld. AO. However, the matter of fact remain that there was no evidence to prove the existence of the building on the land sold as the said building was demolished on the date of execution of conveyance deed.

6. It appears that Ld. Tax Authorities have not considered the question as to at whose instance the existing structure was demolished and there was no inquiry from the purchaser or assessee as to if the consideration under the sale deed was part of the land alone or of the construction also which stood demolished. The assessee has had filed some submissions on the issue before Ld. CIT(A) but who merely considering the remand report and without giving an opportunity to the assessee to prove these questions of fact by relevant and admissible evidence dismiss the appeal.

7. Consequently, **the appeal is allowed for statistical purposes** and the issue on merits is restored to the files of Ld. AO to take into consideration the submissions and evidences of assessee and to give reasonable opportunity to the assessee for proving the question of facts with regard to the existence and demolition of the structure and, at whose instance the structure was demolished and if the consideration under the sale deed was inclusive or exclusive of the structure which stood demolished. Thereupon pass a fresh order on merits.

**Order pronounced in the open court on 29<sup>th</sup> August, 2023.**

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

*Date:29.08.2023*

**\*Binita, SR.P.S\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

AR, ITAT  
New Delhi