

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 137/Del/2017, A.Y. 2007-08

Narender Rao, H.No.170 Dundahera, Behind Badi Chaupal Gurgaon PAN : AHWPR1032N	Vs.	ITO, Ward-3(1), Gurgaon
Appellant		Respondent

Assessee by	None
Revenue by	Shri Anuj Garg, Sr. DR

Date of hearing:	03.10.2023
Date of Pronouncement:	03.10.2023

ORDER

Per Anubhav Sharma, JM :

The appeal is preferred by the Assessee against the order dated 10.11.2016 of Commissioner of Income Tax (Appeals)-1, Gurgaon (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 96/15-16, A.Y. 2007-08 arising out of an appeal before it against the order dated 26.03.2015 passed u/s 147/144 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward03(1), Gurgaon (hereinafter referred as the Ld. AO).

2. Heard and perused the record.

3. At the time of hearing when the case was called, non-appeared for the assessee. Notices have been repeatedly issued and the record shows earlier assessee in person had appeared and sought adjournment on the basis that the AR is unwell or out of station. No further notices are justified. On hearing on merits, Ld. DR supported the findings of Ld. Tax Authorities below. However, what comes up is that assessee has primarily raised ground no. 1 to 7 with regard to denial to admit additional evidence by Ld. CIT(A). Ld. DR has submitted that assessee had sufficient opportunity at the time of assessment and in spite of notices assessee intentionally did not cooperate.

4. Appreciating the matter on record, it can be observed that the additions are primarily in regard to cash deposits in the bank account and the addition on account of commission income allegedly received from booking of flats from a project M-tech Heights.

5. The assessee during the first appellate proceedings had sought opportunity to produce documentary evidences explaining these cash deposits and unexplained commission income however, based on the report of Ld. AO, the Ld. CIT(A) disallowed the additional evidences. As we go through the order of Ld. CIT(A) it appears that on the basis of opportunities given by Ld. AO. Ld. CIT(A) alone he disallowed the additional evidence.

6. The assessee had claimed that no notices were received u/s 148 of the Act as notices were issued on an incorrect address. After taking into consideration the nature of additions, the Bench is of considered view that the Ld. First Appellate Authority was required to show not only issuance of notices but that in spite of notice the evidences being available were not filed before Ld. AO. There is no observation in that regard. Ends of justice required giving opportunity to assessee, which Ld. CIT(A) failed to ensure, accordingly the

grounds raised in regard to non-admission of additional evidence deserve to be allowed.

7. **Consequently, the appeal is allowed for statistical purposes** and the issue on merits is restored to the files of Ld. CIT(A) to decide the issues on merits after admitting the additional evidences filed by the assessee and giving opportunity of hearing for the same.

Order pronounced in the open court on 3rd October, 2023.

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:-03.10.2023

Binita, SR.P.S

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**