

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "G" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.2544/Del/2022  
[Assessment Year : 2012-13]**

Sarita, H.No.25, STRT Mohalla, Asalat Naar, Pargana, Jalalabad Police Station, Muradnagar, Ghaziabad, Uttar Pradesh-201006. <b>PAN-DWPPS6599A</b>	vs	ITO, Ward-2(2)(4), Ghaziabad.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Dinesh Kumar, Adv.	
<b>Respondent by</b>	Shri Anuj Garg, Sr. DR	
<b>Date of Hearing</b>	16.10.2023	
<b>Date of Pronouncement</b>	16.10.2023	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee against the order passed by Ld.CIT(A), National Faceless Appeal Centre ("NFAC"), Delhi for the assessment year 2012-13.

2. The assessee has raised following grounds of appeal:-

1. *"Because, the learned Commissioner of income tax erred in dismissing the appeal as the appellant was prevented with sufficient cause for non compliance on the last date of hearing hence order is against the principal of justice.*
2. *Because, learned commissioner of income tax erred in appreciate that all the addition are without any material /basis against the assessee but merely to punish assessee who could not present his case, but he again sustained all the addition ex-party without considering merits of addition with some purposeful enquiry with*

*proper opportunity more so when addition are high pitched and punitive.*

3. *Because, it is apparent that the learned lower authority grossly erred in not taking any approval in terms of s. 151(2) of the Act causing notice u/s 148 and subsequent proceedings void-ab-initio*
4. *Because, notice issued u/s 148 of Act is beyond jurisdiction being without any valid reason to believe' and/or satisfaction, to conduct roving enquiries without even verifying the nature of transaction etc. etc.*
5. *Because, the learned commissioner of income tax (A) grossly erred in upholding the addition of Rs 8300000/- being land was purchased by assessee, in whole disregard of the fact that source of investment/payment in land was made by her came through gift/amount incurred by her husband and brother in law and source of income in their hands were arose from after selling of their rural agricultural land. Therefore, it is prayed notice u/s 148 and order passed u/s 144/147 may kindly be declared illegal or alternatively is prayed that the total addition may kindly be quashed.”*

3. Apropos to the grounds of appeal, Ld. Counsel for the assessee at the outset, submitted that the lower authorities have passed the impugned order *ex-parte* to the assessee. Ld. Counsel reiterated the submissions as made in the synopsis. For the sake of clarity, the relevant contents of the synopsis are reproduced as under:-

*“This appeal is filed against the dismissed order passed by CIT appeal under section 147 dated on 24/08/2022. The brief fact of case is that AIR information was received that the appellant had purchased land of Rs 8300000/- but no income tax return was filed by him hence on the allegation that income was escaped by him in the relevant assessment year 2012-2013 the case was reopened and notice under section 148 was*

*issued. That due to non compliance assessment was completed under section 144/147 dated on 16.11.2019 at an assessed income of 8300000/- on account of unexplained investment. The appellant filed appeal before CIT against this order and the last date of hearing in appeal before CIT was fixed on dated 17.08.2022 in terms of page no -3 para no 5 of order of CIT. That appellant engaged counsel MR NARESH YADAV to handle this matter and handed over all the relevant documents to him to appear /filed compliance on behalf of appellant. That notice of hearing was only served at mail id: virattaxsolution@gaill.com dated on 10.08.2022, which belongs to regular counsel of appellant MR NARESH YADAV and because he was ill and he had been advised for rest from 05/08/2022 to 20/08/2022 hence this notice was not came to his knowledge hence neither he could filed reply in response of this notice nor he could communicate this fact to appellant The appellant was in good faith that case was attended by appellant. in support of contention copy of medical certificate is here by enclosed. The CIT dismissed the appeal in limine at the stage of admission due to non compliance of section 249(4)(b) dated on 24/08/2022. Hence the present appeal is filed before your goodself against CIT order.*

*That there was no income of assessee hence no advance tax was payable against her hence appeal cannot dismissed on this ground at admission The counsel could not filed reply/compliance because notice of hearing was not came in his knowledge due his illness. Hence it is prayed to kindly remand/restore this case to ITO because detail evidence is required to be examined.”*

4. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. He submitted that the assessee has been negligent for not attending the proceedings before the lower authorities.

5. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. There is no dispute that the impugned order

was passed *ex-parte* to the assessee. There was no participation in the proceedings by the assessee. It is stated that the reason for non-participation was that the assessee being an illiterate lady, engaged one Authorized Representative, Shri Naresh Yadav who had fallen ill. A medical certificate is also placed on record. Looking to the submissions made by the assessee and the medical certificate so filed, we are of the considered view that the assessee was having reasonable cause for not appearing before the lower authorities. Therefore, to sub-serve the principle of natural justice, we hereby set aside the impugned order and restore the assessment to the AO to frame assessment afresh after giving adequate opportunity of being heard to the assessee. The assessee is hereby, directed to cooperate in the assessment proceedings and not to seek adjournment without any reasonable cause. Grounds raised by the assessee are thus, allowed for statistical purposes.

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

Order pronounced in the open Court on 16<sup>th</sup> October, 2023.

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI