

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE  
DR. BRR KUMAR, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 926/Del/2023  
Asstt. Year: 2012-13

Qamar Afzal Talat Build No. T08 Flat 218 Spain Customer Inter City Warsen PO Box Dubai UAE – 81539, Dubai PAN AFDPT9717P (Appellant)	Vs.	ITO Ward- 28(3) New Delhi.  (Respondent)
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Assessee by:	Ms. Shivangi, AR
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	29.08.2023
Date of pronouncement:	31.10.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 31.01.2023 of the Ld. Commissioner of Income Tax (Appeals) NFAC, Delhi ("**CIT(A)**") pertaining to Assessment year ("**AY**") 2012-13.

2. The assessee has taken the following grounds of appeal:-

- “1. *That on the facts and in the circumstances of case and in law, the Ld. Assessing officer erred in creating wrongful demand amounting to Rs. 48,68,010 in strangulation of particulars of principle of natural justice and ignoring relevant material available on record.*
2. *That the Ld. Assessing officer erred in calculating the capital gain on sale which was never made.*

3. *That Ld. Assessing officer calculated the capital gain on sale of property considering only credits appearing in bank statement and fails to take under consideration debits appearing in bank statement which reflects reversal of amount of consideration received.*
4. *That the Ld. Assessing officer erred in issuing notice u/s 148 (Issue of Notice where income has escaped assessment) for initiating income tax proceeding against assessee as there was no escapement of income because income on the basis of which notice was issued to assessee never accrued to the assessee..*
5. *That no income accrued to the assessee during the period under consideration, hence is not liable to any tax liability and therefore no liability under section 234A/B/C can be raised against assessee.*
6. *That the Ld. Assessing officer erred in initiating the penalty proceedings u/s 271(1)(c) as there was no concealment of income by assessee because the sale of property never completed and income never accrued to assessee.*
7. *That the Ld. Assessing officer erred in initiating the penalty proceedings u/s 271F as the assessee as the income of the assessee during the period does not exceed the maximum amount not chargeable to tax.*
8. *That the assessee has neither concealed any particulars of income nor evaded any tax*
9. *That assessee being a NRI and senior citizen was not able to respond the notices, as all the notices were served at Indian address.”*

3. Briefly stated, an information under ‘AIR transaction’ was received by the Ld. Assessing Officer (“AO”) that the assessee had purchased property for an amount of Rs. 3,07,00,000/- during the AY 2012-13. Since no return was filed, the outcome on sale of property escaped assessment. Notice under section 148 of the Income Tax Act, 1961 (**the “Act”**) was therefore issued on 31.03.2019. During re-assessment proceedings there were no compliance. The Ld. AO found from the details on record that share of assessee in the property is 1/5<sup>th</sup>. Hence, according to Ld. AO total capital gain on account of sale of property comes to Rs. 61,40,000/- which he added to the income of the assessee as capital gain and completed the re-assessment accordingly on total income of Rs. 61,40,000/- on 27.11.2019 under section 147/144 of the Act.

4. The assessee filed appeal before the Ld. CIT(A). In written submission filed by the assessee on 11.10.2021 before the Ld. CIT(A) the assessee contended that the Ld. AO erred in calculating capital gain on sale which was never made. It was also stated that the Ld. AO calculated the capital gain on sale of property considering only credits appearing in bank statement and failed to take into consideration debits appearing in bank statement which reflects reversal of amount of consideration received. According to the assessee, no income accrued to the assessee during the year, hence, he is not liable to any tax liability.

5. The Ld. CIT(A) decided the appeal on the basis of material on record and declined to interfere with the order of the Ld. AO. This has brought the assessee before the Tribunal challenging the impugned addition and consequent tax demand.

6. We have heard the Ld. Representative of the parties and perused the record. It is obvious from para 6 of the appellate order that the assessee's appeal has not been decided by the Ld. CIT(A) on merits. On the facts and in the circumstances of the case, we deem it fit, in the interest of justice and fair play to restore the matter back to the file of the Ld. CIT(A) for decision afresh in accordance with law after allowing reasonable opportunity of being heard to the parties. We order accordingly.

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

**Order pronounced in the open court on 31<sup>st</sup> October, 2023.**

**sd/-**  
**(DR. BRR KUMAR)**  
**ACCOUNTANT MEMBER**

**sd/-**  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Dated: 31/10/2023  
**Veena**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	