

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 2704/DEL/2017**  
**Assessment Year: 2008-09**

Shri Mahendra Singh, Village Khedi, Tehsil Dardri, G.B. Nagar, U.P. PAN- ASLPS4159D	<u>Vs</u>	Income-tax Officer, Ward-2(2), Noida.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee by</b>	<b>Sh. V.K. Goel, Adv.</b>	
<b>Department by</b>	<b>Sh. Om Parkash, Sr. DR</b>	
<b>Date of hearing</b>	<b>04.12.2023</b>	
<b>Date of pronouncement</b>	<b>04.12.2023</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-I, Noida, dated 24.02.2017, pertaining to the assessment year 2008-09. The assessee has raised following grounds of appeal:

*1) That the total value of land taken at Rs. 30,05,000/- as against of Rs. 15,00,000/- for which amount the sale deed has been executed, without Considering the others facts of the case, the land was in litigation and the government of UP has resumed this land and compensation has been awarded to Sh. Khusi Ram S/o Chajjumul Sharma (Original Owner) and not to the assessee. In this regard the letter of Additional District Magistrate (Land Acquisition) Greater noida, Gautam Budh Nagar and the litigation papers were filed with the AO as well as Ld. CIT(Appeals), Noida.*

*2) That without considering the facts of the case the Ld. CIT (Appeals) has passed this order which is bad in law and against the facts and circumstances of the case.*

*3) That as regard the source of investment regarding the purchase of this land, the appellant has submitted that out of agriculture income and dairy income, he has invested the amount of ½ share but the LD CIT (Appeals) has also not accepted the appellant version.*

2. The only effective ground in this appeal is against sustaining the addition of Rs. 16,22,700/- . Briefly stated facts are that case of the assessee was reopened on the basis of information received regarding purchase of immovable property for a consideration of Rs. 30,05,000/-. Notice u/s 148 of the Income-tax Act, 1961 (the “Act”). However, there was no representation on behalf of the assessee. Therefore, the AO made addition of Rs. 30,05,000/- u/s 68 of the Act and assessed income at Rs. 30,05,000/-. Aggrieved against this the assessee carried the matter before the learned CIT(Appeals), who reduced the addition to Rs. 16,22,700/-. Against this the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee stated that the authorities below have failed to appreciate the fact that the property in question was under the joint ownership. The assessee was having half share into such property. He contended that Assessing Authority adopted the sale consideration as per stamp valuation. However, the learned CIT(A) granted relief to the extent of actual sale consideration, but failed to consider the fact that assessee was not the sole owner of

the land in question. He, therefore, contended that the assessee was not given meaningful opportunity by the Assessing Officer. Had the Assessing Authority provided adequate opportunity, the assessee could have explained the true and correct facts before the Assessing Officer.

4. On the other hand, learned DR opposed the submissions and supported the orders of the lower authorities.

5. I have heard rival contentions and perused the material available on record. It is seen from the record that the AO did not provide effective opportunity of hearing to the assessee and proceeded to frame the assessment ex parte to the assessee without verifying the correct facts. Further, the learned CIT(A) has not adverted to the contention of the assessee that the assessee was not the sole owner of the property. It was in joint ownership with one Shri Krishan Gopal Bansal. Therefore, the entire sale consideration could not have been attributed to the assessee. Therefore, having considered the facts available on record, I am of the considered view that lower authorities ought to have verified the facts as stated by the assessee. I, therefore, set aside the impugned order and restore the issue to the file of the assessing Authority to verify the correctness of the claim of the assessee that the land in question was under the joint ownership and the assessee was the

owner of half of such property. If find correct, the AO would restrict addition to the extent of 50% in the hands of the assessee. I order accordingly.

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

Order pronounced in open court on 04.12.2023.

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

**\*MP\***

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**