

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE,
SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.1434/De1/2023
(ASSESSMENT YEAR 2011-12)**

Anuj Kumar Singh Vill & P.O. Aurang Nagar Rardhana Patti Rawat Meerut Uttar Pradesh- 250 342 PAN-ADQPS 2447L (Appellant)	Vs.	Income Tax Officer Ward-1(1)(1) Meerut (Respondent)
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Appellant By	Sh. Devasish Bhadauriya, CA
Respondent by	Sh. Kanv Bali, Sr. DR
Date of Hearing	27.12.2023
Date of Pronouncement	27.12.2023

ORDER

PER SAKTIJIT DEY, VP:

This is an appeal filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 10/03/2023 for Assessment Year 2011-12.

2. Grounds taken in this appeal are as under:

"1. The Ld. CIT (Appeals) has erred in not accepting and admitting the additional evidences filed in appeal proceedings with the remarks that the same have not been produced before the A.O, by ignoring the facts that the statutory notices were not served upon the assessee during the course of

assessment proceedings, resulting in an *ex-parte* assessment and the appellant was prevented by sufficient cause for producing evidence before the A.O.. Therefore, the action of the Ld. CIT (A) is arbitrary and unjust.

2. The Ld. CIT (A) neither verified the services of statutory notices nor sent the documents relating to additional evidences to the Assessing Officer for verifying at his end. Thus, order passed by Ld. CIT (A) behind the back of A.O./I.T.O for not admitting such evidences is the violation of principle of natural justice and also violation of condition of Rule 46A(3) of the I.T Rules.

3. That, the Ld. CIT (A) has also erred in not admitting the additional evidence which are crucial for the disposal of appeal merely on the ground that the additional evidences were not supported by an application u / r 46A of the I.T Rules. In fact, Rule 46A cannot override the principals of natural justice.

4. That, the Ld. CIT (A) has erred in dismissing the grounds no. 3 & 4 of appeals by observing that the A.O. has no occasion to issue notice u/s 143(2) of the I.T Act due to non-compliance of notice u/s 148 of the I.T Act. Whereas, the appellant has already filed the original return of income electronically u/s139 of the Act on 31.03.2012, which is placed on records. Thus, in absence of issuing and serving the statutory notice u/s 143(2) of the I.T Act the assessment framed by the Ld. A.O. is liable to be quashed.

5. That the Ld. CIT(A) in not considering the written submission filed on 10/03/2023 and also not admitting the cogent and essential material evidences viz. Purchase Deed and details of investment into construction of new residential house etc. which are relevant for calculating the Long Term Capital Gain on sale of residential house and ascertain the tax liability by the appellant.

6. The assessee may crave to add, delete or modify any grounds of appeal during the course of appeal proceedings.”

PRAYER

In the light of the aforesaid Grounds of appeal, it is humbly prayed that the additional evidence as mentioned in Ground No.5 and also filed before the Ld. CIT(A) in appeal proceedings may kindly be admitted and restore the matter back to the file of Assessing Officer.

3. At the outset, learned Counsel for the assessee, on instructions did not press grounds No.2 & 4; accordingly, these two grounds are dismissed as not pressed.

4. Qua grounds No.1, 3 & 5, learned Counsel appearing for the assessee submitted that based on AIR information indicating that the assessee has sold immovable property during the year under consideration, the Assessing Officer reopened the assessment under section 147 of the Act. He submitted due to compelling circumstances the assessee could not participate in the assessment proceedings. As a result of which, the Assessing Officer proceeded to complete the assessment *ex parte* to the best of his judgment under section 144 r.w.s.147 of the Act. He submitted, the assessee is one of the co-owners of the property sold. He submitted, the property was purchased on 30/05/2006, whereas, it was sold on 16/03/2011. He submitted, though the property sold was a long term capital asset, however, the Assessing Officer has taxed the profit derived from sale of the property as short term capital gain since, assessee could not produce the purchase deed in course of

assessment proceedings. He submitted, though, before the First Appellate Authority the assessee produced the purchase deed, however, the First Appellate Authority declined to accept the purchase deed as an additional evidence and confirmed the addition made by the Assessing Officer. He submitted, since the addition on account of short term capital gain was made only due to non furnishing of purchase deed, the issue may be restored back to the file of Assessing Officer for deciding afresh, so that the assessee would be in a position to furnish the purchase deed for examination of the Assessing Officer.

5. The Ld. Departmental Representative (DR), though, submitted that despite sufficient opportunity being given, assessee did not respond to any of the statutory notices issued by the Assessing Officer, however, he submitted that the issue can be re-examined by the Assessing Officer.

6. Having considered rival submissions and perused the materials on record, we find that assessment in case of the assessee

was reopened to assess the capital gain arising from sale of immovable property. Admittedly, in course of assessment proceedings, the assessee did not comply to the notices issued u/s 142(1) and 148 of the Act. Due to failure of the assessee in complying to the notices, the Assessing Officer proceeded to complete the assessment based on materials available on record. Since, the Assessing Officer did not have any evidence relating to the date of purchase of the property sold, he treated the gain derived from sale of property as short term capital gain. It is evident, before the First Appellate Authority, the assessee did furnish a copy of the purchase deed. However, he refused to take cognizance of the purchase deed on a purely technical reason that assessee had not filed any application under Rule-46A seeking admission of additional evidence. Thus, it is patent and obvious that the subject addition on account of short term capital gain is only for the reason that the purchase deed was not available before the Departmental Authorities.

7. It is the specific case of the assessee that the property was purchased on 30/05/2006 and sold on 16/03/2011, therefore, it is a long term capital asset. It is further case of the assessee that the assessee is one of the co-owners of the said property. If the assessee wants to prove the nature of the asset, whether long term or short term by leading some evidence, in our view, such opportunity should be granted to the assessee. Since, the First Appellate Authority has refused to take cognizance of the evidences furnished by the assessee, in our view, the assessee deserves an opportunity to prove his case through proper evidence not only with regard to nature of asset, whether long term and short term, but also the extent of his ownership over all the asset. Accordingly, we set aside the impugned order of the First Appellate Authority and restore the issue to the file of the Assessing Officer for fresh adjudication after providing due and reasonable opportunity of being heard to the assessee. It is open to the assessee to furnish any credible evidence in support of his claim. Accordingly, grounds no.1, 3 & 5 are allowed for statistical purposes.

8. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the Open Court on 27th December, 2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Dated: 27/12/2023

PK/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI