

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.2064/Del/2023
(Assessment Year: 2012-13)**

Surya Pratap Singh,
KA – 138, Galaxy Ganga,
Ganga Nagar,
Meerut (Uttar Pradesh).

vs.

ITO, Ward 2 (5),
Meerut.

(PAN : AIAPS1956P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.K. Jain, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 11.01.2024

Date of Order : 17.01.2024

ORDER

This appeal by the assessee is directed against the order of Id. CIT(A)/
National Faceless Appeal Centre (NFAC) dated 22.05.2023 for the Assessment
Year 2012-13.

2. Grounds of appeal taken by the assessee read as under :-

“1. That the order as passed by the authorities below is arbitrary, unjust, illegal and bad in law, because the authorities below have erred in law as well as in facts while passing the orders.

2. That on the facts and circumstances of the case, the Assessment order Dt. 2/12/2019 is null & void, as the same is in violation of CBDT circular No. 19/2019 requiring mandatory DIN.

3. That without prejudice to above, the order as passed by the learned ITO is illegal on the facts and circumstances of the case,

which has wrongly been confirmed by the Learned CIT(A), ignoring the evidences produced before him.

4. That the Learned CIT (A) was wrong in saying in para 6 that the assessee failed to comply the notice as issued U/s 142(1), when no any notice u/s 147 and/or 142(1) was ever served and the order has been passed without considering the facts & circumstances of the case.

5. That the learned CIT(A) was wrong in saying that the notice as issued U/s 148 Dt.28-03-2019 was issued after recording the reason to believe and no separate issue of notice u/s 143(2) is necessary, when no any such notice was ever been served and no proper opportunity of being heard was allowed to present the case.

6. That the assessment order was served on line on 18.06.2021 along with notices U/s 271(1)(b) & 271(1)(c) and 142(1) Dt 25.07.2019, on which the notice server has reported on 29.07.2019, that no body lives here and house is ruined (copy attached).

7. That the learned CIT(A) was also wrong in referring /considering the Sections 50-C and 54F, in para 6.4.1. to 6.4.3. and saying that all notices were served at the address of the appellant as per return, when no any such notice was ever issued or served as per return filed & assessed.

8. That the Learned authorities below is wrong in assessing the income as short term capital gain, when the date of purchase of property was duly mentioned in sale deed as 07.03.2003, and the assessee has filed the copies of purchase deed of old property, sale deed of old property and purchase of new property, hence exempt U/s 54 of I.T. Act.1961.”

3. In this case, in an ex-parte order, the AO noted that as per AIR information, assessee has sold an immovable property for Rs.34,00,000/-. In absence of any information from the assessee, AO considered the same as long term capital gain of the assessee and added the same to the income of the assessee.

4. Upon assessee's appeal, ld. CIT (A) noted that assessee has claimed exemption under section 54F of the Income-tax Act, 1961 (for short 'the Act').

However, ld. CIT (A) noted that this should have been done in the return of income. In absence of the same, ld. CIT (A) did not consider the same. He further noted that cost of house and fact of purchase of new house was not communicated, hence ld. CIT (A) confirmed the addition.

5. Against the above order, assessee is in appeal before us. I have heard both the parties and perused the records.

6. Ld. Counsel of the assessee submitted that assessee could not be represented before the AO. However, detailed request was made at the level of ld. CIT (A) who has summarily dismissed the same.

7. Upon careful consideration, I am of the opinion that in the interest of justice, the matter needs to be remitted to the file of AO. Accordingly, the issues raised are remitted to the AO. AO is directed to consider the assessee's request for granting deduction for cost of house and the exemption u/s 54F of the Act which is being claimed. Needless to add, assessee should be provided adequate opportunity of being heard.

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

Order pronounced in the open court on this 17th day of January, 2024.

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 17th day of January, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**