

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

**ITA No.6833/Del/2018  
(Assessment Year: 2009-10)**

Devender Kumar,  
C/o Anamika Memorial Shiksha Niketanm,  
H.No.36, Ganga Enclave, Loni Border,  
Ghaziabad.

vs. ITO, Ward 1,  
Ghaziabad.

**(PAN : BARPK0744H)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Umesh Kumar, 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),  
Aligarh dated 10.07.2018 for the Assessment Year 2009-10.

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

“1. On the facts & in the circumstances of the case and in law, the authorities below erred in reopening the subject assessment and confirming the said action, despite the fact that the said reopening was made mechanically based completely on unverified details, reproduced into Reasons without any enquiry or verification or application of mind.

2. On the facts & in the circumstances of the case and in law, the CIT(A) erred in not considering the facts that Appellant was joint owner with his brothers of properties sold despite the facts that all document were produced to prove that properties were owned by jointly by Appellant and his brothers.

3. On the facts & in tile circumstances of the case and in law, the CIT(A) erred in accepting the cost of acquisition of properties as given by

Ld. AO without affording any opportunity to the Appellant to rebut the same.

4. On the facts & in the circumstances of the case and in law, the CIT(A) erred in confirming the addition to the extent of Rs.9,12,534/- being LTCG despite the fact that there is no long term capital gain in the hand of Appellant during the assessment year in dispute.

5. On the facts & in the circumstances of the case and in law, the CIT(A) erred not appreciating the facts that sufficient opportunity has not been provided before framing the assessment by Ld. AO 'as notice on appellant was issued on 27.10.2016 for compliance on 4.11.2016, while Ld. AO has passed the assessment on 31.10.2016 due to non compliance.

3. Brief facts of the case are that the assessee had filed his return of income on 31.03.2010 declaring total income of Rs.1,49,850/-. Subsequently, information was received that cash of Rs.15,01,000/- was deposited in the savings bank account with Bank of India, Ghaziabad. On this basis, proceedings were initiated by issuing a notice u/s 148 of the Income-tax Act, 1961 (for short 'the Act') on 10.03.2016. No return of income was filed in response to the said notice. Thereafter, notices u/s 142(1) of the Act were also issued but no compliance was made. Therefore, a show cause notice u/s 144 was issued on 04.11.2016. When the assessee did not file any reply to the said notice, the AO proceeded to make a best judgement assessment u/s 144 of the Act. As no explanation was offered with regard to the credits appearing in the bank account, the total of such credits was added to the total income. This resulted in an addition of Rs.15,18,516/-.

4. Upon assessee's appeal, Id. CIT (A) noted that assessee has claimed that sum represented income from sale of house and only 1/3<sup>rd</sup> of the house

belongs to him and rest belongs to his two brothers. However, ld. CIT (A) did not consider the same in absence of any cogent material. However, he granted deduction under section 54F of the Act of a sum of Rs.5,81,184/-.

5. Against this order, assessee has filed appeal before the ITAT. I have heard both the parties and perused the records.

6. Ld. Counsel of the assessee prayed that an opportunity may be granted before the AO so that assessee can properly canvass his plea that his share in the property was only 1/3<sup>rd</sup> and the rest belongs to his two brothers. Ld. DR for the Revenue did not have any objection to this proposition. Accordingly, I remit this issue to the file of AO. Needless to add, assessee should be provided adequate opportunity of being heard.

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

**Order pronounced in the open court on this 17<sup>th</sup> day of January, 2024.**

**Sd/-**

**(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 17<sup>th</sup> day of January, 2024**

**TS**

Copy forwarded to:

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

**AR, ITAT  
NEW DELHI.**