

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.1395/DEL/2023
[Assessment Year: 2011-12]**

Pradeep Kumar, Flat No.301, Tower-K, Great Value Sharnam, Sector-107, Noida, Gautam Budh Nagar, Uttar Pradesh-201301	Vs	Income Tax Officer, Ward-2(4), Aayakar Bhawan, A-2/D, Sector-24, Noida, Uttar Pradesh-201301
PAN-AGAPK7670G		
Assessee		Revenue

Assessee by	Sh. Suraj Bhan Nain, Adv. & Shri Mahfuzur Rahman, CA
Revenue by	Shri Vivek Vardhan, Sr. DR

Date of Hearing	06.03.2024
Date of Pronouncement	12.03.2024

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi, dated 17.03.2023 pertaining to Assessment Year 2011-12.

2. The assessee has raised following grounds of appeal:-

"1. That having regard to facts and circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) erred on facts and in law upholding initiation of re-assessment proceedings u/s 147 of Income Tax Act 1961 (the Act) by the Ld. Assessing Officer, which was not in accordance with the requirements of provisions of sections 147 to 151 of the Act, in as much as that-

- i. *The notice u/s 148 of the Act dated 27.03.2018 for A.Y. 2011-12 issued by non-jurisdictional ITO, Ward-2(1), Meerut is ab-initio void;*
- ii. *The reasons u/s 148(2) of the Act were recorded based on patently incorrect facts and, hence, invalid;*
- iii. *There was no valid approval u/s 151 of the Act; and*
- iv. *The jurisdictional Assessing Officer, ITO, Ward-2(4), Noida erred in making assessment u/s 147/143(3) of the Act order dated 30.11.2018, without assuming valid jurisdiction u/s 147 of the Act as he has not recorded reasons u/s 148(2) and has not issued any notice u/s 148 of the Act.*

2. That having regard to the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the addition of Rs. 39,66,000/- made by the Ld. Assessing Officer on account of alleged unexplained investment in purchase of immovable property, without properly appreciating facts of the case.

3. That having regard to the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) erred in law and on facts in passing the appellate order without giving reasonable and adequate opportunity of being heard and by not observing the principles of natural justice.

4. That having regard to the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) erred in law and on facts in upholding the action of the Ld. Assessing Officer charging interest u/s 234B of the Income Tax Act, 1961.”

3. At the outset, in this case, it is noted that pursuant to Assessing Officer's order, the assessee appealed before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal for non-prosecution. We note that the section 251 of the Income Tax Act does not provide any power to the Ld. CIT(A) to dismiss the appeal for non-prosecution. Hence, in the interest of justice, we restore this issue to the file of the Ld. CIT(A). The Ld. CIT(A) shall examine the issue afresh after giving the assessee proper opportunity of being heard.

4. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 12th March, 2024.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Dated:- 12.03.2024

YSK

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi