

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

**BEFORE SHRI CHALLA NAGENDRA PRASAD:  
JUDICIAL MEMBER**

ITA No.2953/Del/2023  
Assessment Year: 2011-12

Neeraj Gupta, H.No. 256, BM Compound, Bazaria, Ghaziabad (UP) PIN: 201 001	<b>Vs.</b>	Income Tax Officer, Ward 2(5), Ghaziabad
<b>PAN :AIIPG0166D</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Akhilesh Kumar, Adv.
Department by	Shri Om Prakash, Sr. DR

Date of hearing	23.01.2024
Date of pronouncement	22.04.2024

**ORDER**

**PER CHALLA NAGENDRA PRASAD: JUDICIAL MEMBER:**

This appeal is filed by the assessee against the order of learned Commissioner of Income-Tax (Appeals) National Faceless Appeal Centre (NFAC), Delhi dated 15.09.2023 for the assessment year 2011-12. The assessee has raised the following grounds:

“1. Because, the Id. CIT(Appeals) is bad in law and against the facts and circumstances of the case.

2. Because, the Id. CIT(Appeals) is incorrect on record in recording that assessee has failed to file any adjournment on the last date of hearing on 11.09.2023, although assessee had filed response informing engagement of counsel with request to allow time on that date and filed Vakalatnama on 12.09.2023, thus the very basis to dismiss the appeal ex-parte on the line of in limine, by citing B.N. Bhattacharya/Multiplan India P. Ltd. etc. which is erroneous.

3. Because, the Ld. CIT(Appeals) erred in dismissing the appeal ex parte without providing proper opportunity of being heard, more so when assessee could not proper opportunity of being heard even before Ld. AO in terms of Grounds of appeal filed Id. CIT(A) but without adjudicating the several legal/factual grounds, thus order is against the provisions of section 250/251 of Act and law settled on the issue.

4. Because, the Ld. CIT(Appeals) failed to appreciate that total sale consideration of Rs.21,85,000/- is added without allowing any cost of acquisition contrary to provisions of section 48 and summarily sustained the addition without adjudicating the issue.

5. Because, both the authorities further erred in not considering the submission of assessee that cash is deposited out of sale consideration received in cash thus addition of 22,71,076/- amounts to double taxation.”

2. At the outset, the learned counsel for the assessee submits that the appeal of the assessee was disposed of ex parte by the learned Commissioner of Income-Tax(Appeals)/National Faceless Appeal Centre (NFAC) without providing reasonable opportunity of being

heard. Learned counsel further submits that the appeal was disposed of by the learned Commissioner (Appeals) for non-compliance to the notices issued by the learned Commissioner of Income-Tax(Appeals), there is no any specific finding on merits on the ground raised by the assessee. The learned counsel for the assessee submits that in response to notice dated 21.08.2023 requiring the assessee to file his submissions by 11.09.2023 and adjournment application was moved by the newly engaged counsel and sought time till 31.10.2023. However, the learned Commissioner of Income-Tax(Appeals) has incorrectly mentioned in the order that the assessee failed to submit any documentary evidence in support of his case nor filed any adjournment application and dismissed the appeal of the assessee ex parte on 15.09.2023. Therefore, the learned counsel for the assessee submits that the matter may be restored to the file of the learned Commissioner of Income-Tax(Appeals) for deciding the grounds on merit after providing adequate opportunity of being heard to the assessee.

3. Learned Departmental Representative has no serious objection in restoring the appeal to the file of the learned

Commissioner of Income-Tax(Appeals)/National Faceless Appeal Centre for deciding the grounds on merits.

4. Heard rival submissions and perused the orders of the authorities below.

5. On hearing both the sides and perusing the order of learned Commissioner of Income-Tax(Appeals), this appeal is restored to the file of the learned Commissioner of Income-Tax(Appeals) to decide the appeal afresh on merits after providing adequate opportunity of being heard to the assessee.

6. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 22/04/2024.

**Sd/-**  
**(CHALLA NAGENDRA PRASAD)**  
**JUDICIAL MEMBER**

Dated: 22<sup>nd</sup> April, 2024.

**Mohan Lal**

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi