

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

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

ITA No.3051/Del/2023  
Assessment Year: 2011-12

|   |            |                               |
|---|------------|-------------------------------|
| Neera Dhupar,<br>1E/15, Jhandewalan<br>Extension, Delhi-1100 55 | <b>Vs.</b> | ITO, Ward-2(3),<br>NOIDA (UP) |
| <b>PAN :AAEPD0174E</b>  |            |                               |
| <b>(Appellant)</b>  |            | <b>(Respondent)</b>           |

|               |   |
|---------------|---|
| Assessee by   | Shri Salil Aggarwal, Sr. Adv & Shri<br>Shailesh Gupta, Adv. |
| Department by | Shri Om Prakash, Sr. DR                                     |

|                       |            |
|-----------------------|------------|
| Date of hearing       | 24.01.2024 |
| 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 07.09.2023 for the assessment year 2011-12. The assessee has raised the following grounds of appeal:

“1. That the learned Commissioner of Income-Tax(Appeals) has grossly erred both in law and on facts in sustaining an assessment under Section 144/148 of the Act at an income of Rs.26,50,000/- as against returned income of Rs.7,12,385/-.

2. That the learned Commissioner of Income-Tax(Appeals) has further erred both in law and on facts in upholding the initiation of proceedings under Section 147 of the Act, in as much as, the instant reassessment proceedings were without satisfying the statutory pre-condition as envisaged under the Act.

2.1 That the learned Commissioner of Income-Tax(Appeals) has failed to appreciate the fact that the reassessment proceedings so initiated by Assessing Officer based in Noida are without jurisdiction, as the assessee's jurisdiction lies in Delhi and that is why, the notices so issued by A.O in Noida were never served on the assessee on the address mentioned in the return of income so filed by the assessee.

2.2 That the learned Commissioner of Income-Tax(Appeals) has further failed to appreciate the fact that the reasons recorded were without application of mind and were recorded at the behest of superior authority, further, there were many factual and legal inaccuracies in the reasons recorded which also shows total non-application of mind by superior authority in granting approval for reopening of assessment, as such, the reassessment proceedings are a mere pretence and deserves to be quashed.

3. That the learned Commissioner of Income-Tax(Appeals) has further erred both in law and on facts by dismissing the appeal of assessee without going into the merits of the case and without passing a speaking order by giving finding with regards to the grounds of appeal raised by assessee and merely dismissing the appeal on technical ground that since the assessee has failed to file application under Rule 46A, fresh arguments and evidences so filed by assessee cannot be

considered, which is in complete violation of provisions of section 250 of the Income-Tax Act.

4. That the learned Commissioner of Income-Tax(Appeals) has grossly erred both in law and on facts in sustaining an addition of a sum of Rs.26,50,000/- by failing to appreciate the fact that the issue with regards to sale of property was duly disclosed by the return of income filed u/s 139 of the Act by the assessee, wherein, half share of property sold as being owned by assessee was duly disclosed (remaining half share held by his husband, has been accepted by Revenue), and as such, the addition so made and sustained are completely based on conjectures and surmises and deserves to be deleted, as such.

4.1 That the learned Commissioner of Income-Tax(Appeals) has further erred in sustaining the aforesaid addition purely on assumptions, presumptions, surmises and conjectures and hence, the addition so sustained made is unsustainable and liable to be deleted.

5. That the learned Commissioner of Income-Tax(Appeals) has erred in law and on facts in sustaining additions in the hands of assessee, without giving any fair and proper opportunity of being heard to the appellant, as once the assessee had stated all the facts before learned CIT(A) regarding reasons of non-compliance before A.O, it was incumbent upon learned CIT(A) to have decided the appeal on merits u/s. 250 of the Act.”

2. At the outset, the learned counsel for the assessee submits that the assessee raised a ground before the learned CIT(A) contending that under the provisions of section 147 of the Act, the notice of income escaping assessment under Section 148 of the Act has to be

communicated to the assessee which was never done by the Assessing Officer. The learned counsel for the assessee further submits that this ground of appeal that notice under Section 148 of the Act never served on the assessee was not adjudicated by the learned Commissioner (Appeals) National Faceless Appeal Centre (NFAC), Delhi.

3. Learned counsel for the assessee further submits that the matter may be restored to the file of the learned Commissioner (Appeals) for deciding the specific grounds raised by the assessee.

4. On the other hand, learned Departmental Representative has no serious objection in restoring the appeal to the file of the learned Commissioner of Income-Tax(Appeals) for deciding the legal issue raised by the assessee.

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

6. On hearing both the sides and perusing the order of learned Commissioner of Income-Tax(Appeals), it is noticed that the assessee has taken a specific plea that the notice issued under Section 148 of the Act was never communicated to the assessee.

7. Perusal of the order of learned Commissioner of Income-Tax(Appeals) shows that he did not adjudicate the specific grounds raised by the assessee. Therefore, this appeal is restored to the file of the learned Commissioner of Income-Tax(Appeals) to dispose of the specific ground raised by the assessee on service of notice under Section 148 of the Act after providing adequate opportunity of being heard to the assessee. Since, the outcome of the decision on service of notices issued under Section 148 of the Act and the validity of the assessment itself has bearing on the merits of the addition/disallowance made the other grounds raised by the assessee on merits are also restored to the file of the learned Commissioner (Appeals) for deciding the issues afresh in accordance with law after providing adequate opportunity of being heard to the assessee.

7. 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