

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 901/Del/2022
Asstt. Year: 2011-12

Pushpa Joshi D-170 Sector-27, Noida Uttar Pradesh 201 301 PAN AEEPJ0375H (Appellant)	Vs.	AO, Ward5(2)(4) Gautam Budh Nagar Uttar Pradesh (Respondent)
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Assessee by:	Shri Sanjeev Jain, CA
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	18.04.2024
Date of pronouncement:	03.05.2024

ORDER

PER VIMAL KUMAR, JM

The appeal is against order dated 23.03.2022 of the Learned Commissioner of Income Tax (Appeals) dismissing the appeal of assessee against assessment order dated 31.10.2018 of the Learned Assessing Officer completing the assessment proceedings ex-parte under section 147/144 of the Income Tax Act, 1961. Assessment was completed on total income of Rs. 62,50,000/- under section 147/144 of Income Tax Act, 1961 and charging interest under section 234A and 234B issued notice of demand and challans and issue penalty notice under section

271(1)(c) of the Income Tax Act, 1961 for furnishing inaccurate/concealed the particulars of his income separately.

2. Brief facts of case are that AIR information was received that assessee had immovable property worth Rs. 62,50,000/- during the financial year 2010-11 relating to assessment year 2011-12 and therefore proceedings under section 147 of Income Tax Act were initiated. Despite notice under section 148 dated 23.03.2018 no compliance was made. Thereafter notice under section 142(1) of the Income Tax Act, 1961 along with questionnaire was issued on 18.05.2018 for compliance on 29.05.2018. Again notice under section 142(1) was issued on 20.09.2018 for compliance on 28.09.2018. Neither anybody appeared nor filed any reply. Hence exparte assessment order dated 31.10.2018 was passed.

3. Being aggrieved appellant / assessee preferred appeal before Ld. CIT(A). Despite notice assessee's representative failed to appear. So Learned CIT(A) decided appeal in exparte.

4. Hence present appeal by assessee.

5. Learned Representative for assessee filed application for additional ground of appeal i.e. "That no notice under section 148 was served on the assessee as the same was sent on an unknown address and therefore the impugned assessment order passed under section 147 of the Act in this case is bad in law and deserves to be quashed." Learned Sr. DR submitted copies of

documents in response to prayer for additional grounds. In view of contents of application the prayer for additional ground of appeal is allowed.

6. Learned assessee's Representative submitted that assessee is holding PAN No. AEEPJ0375H and working with All India Institute of Medical Sciences (AIIMS), New Delhi and assessee had been filing her return of income regularly. She had submitted annual income tax return for the year 2011-12 declaring total income of Rs. 10,80,645/-. During the assessment year 2011-12 assessee sold a residential plot and sale consideration so received was used for purchase of immovable property i.e. House No. 170 situated in Block D, Sector 27, NOIDA for sum of Rs. 62,50,000/-. Assessee took a home loan. Learned Income Tax Officer passed an ex-parte assessment order under section 147/144 of the Income Tax Act, 1961 on 31.10.2018 making an addition of Rs. 62,50,000/- on the ground that the assessee had made an investment for purchase of immovable property, during period from 01.04.2010 to 31.03.2011 and the assessee had no explanation regarding source of investment. Learned CIT(A) dismissed the appeal after issuance of notice to Learned Counsel for the assessee who did not respond. The additional ground of appeal mentioned that no notice under section 148 was served upon the assessee as the same was sent to un-known address. As such impugned ex-parte assessment order was bad in law. The assessee is a regular income taxpayer. Therefore impugned orders may be set aside.

7. Learned Senior Departmental Representative submitted that notice under section 147 was rightly issued on basis of record. Reasons for reopening the assessment were given. So appeal may be rejected.

8. From examination of record in light of aforesaid rival contention, it is crystal clear that appellant assessee is a regular taxpayer. Assessee claimed that no notice under section 148 of the Income Tax Act, 1961 was served on her as the same was sent to an unknown address. Learned Assessing Officer had issued notice to assessee on address mentioned in transaction description prepared on basis of contents of sale deed provided by the office of the Sub Registrar, Sector 33, Noida. As such, the action of Learned Assessing Officer is just, fair, reasonable and legally sustainable. Learned Assessing Officer has passed ex parte order dated 31.10.2018. Learned CIT(A) had decided appeal of assessee when no response was received from the counsel for assessee/appellant. So it is evident that assessment order dated 31.10.2018 and appeal's dismissal order dated 23.03.2022 have been passed ex parte. Therefore the passing of ex-parte assessment order and ex-parte dismissal of order in appeal deserves to be set aside. Under such circumstances, in the interest of justice and fair play, we deem it fit to restore the subject matter back to the file of the Learned AO to allow the assessee reasonable and sufficient opportunity to make submissions and plead its case and then decide afresh in accordance with law. We order accordingly. Consequently, both the orders of the Learned AO and Learned CIT(A) are set aside.

10. No other point was argued.

11. In the result appeal of the assessee is allowed for statistical purpose. Both the impugned orders dated 23.03.2022 and 31.10.2018 are set aside. The subject matter restored back to the Learned Assessing Officer to allow assessee reasonable and sufficient opportunity to make submissions and plead its case and then decide afresh in accordance with law.

Order pronounced in the open court on 3rd May, 2024.

sd/-

**(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 03/05/2024

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	