

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
Dr.B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.2612/Del/2023**

**[Assessment Year : 2011-12]**

Nitin Kumar, A-129, OMAXE NRI City, Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201307. <b>PAN-AJCPK5527E</b>	vs	ITO, Ward-2(3), Noida.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Shivam, Adv.	
<b>Respondent by</b>	Shri Om Parkash, Sr.DR	
<b>Date of Hearing</b>	25.04.2024	
<b>Date of Pronouncement</b>	09.05.2024	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 16.08.2023 for the assessment year 2011-12.

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

1. *“Because the order of the learned lower authority is bad in law and against the facts and circumstances of the case and hence is unsustainable.*
2. *Because the Ld. CIT(A) and Ld. AO has failed to provide the proper opportunity of being heard. Hence the order is liable to be quashed.*
3. *Because the Ld. CIT(A) and Ld. AO has erred in passing the assessment order as the notice issued under section 142(1) of the Income Tax Act, 1961 had not served to the Assessee, so the addition is invalid.*

4. *That the Assessee got to know about the Notice issued by the Ld. AO through a relative that still resides in the village-Malakpur. That the Appellant on the last date of hearing was suffering from a lower back pain and was not in a condition to attend the proceeding before the Ld. AO.*
5. *Because the Assessee purchased an immovable property number A-129, Omaxe NRI City, Greater Noida, UP jointly with his brothers on dated 02.11.2010 of Rs. 51,50,000 and paid stamp duty of Rs. 2,74,200. The total amount of Rs. 54,24,200, the 1/3 share of the Assessee is Rs. 18,08,066.*
6. *Because the Ld. AO has wrongly considered the share of the Assessee in purchasing the said property which is 18,08,066 as an unexplained investment and should not be straight away added in the income of the Assessee.*
7. *The Assessee has the right to add or modify any ground of appeal.*
8. *In terms of the above, the addition of Rs.18,08,066/- is illegal and arbitrary and bad in law, hence it is prayed that the addition may kindly be quashed in TOTO.”*

3. At the outset, Ld. Counsel for the assessee submitted that lower authorities failed to give adequate opportunity to the assessee. There was no effective representation on behalf of the assessee and the assessment has been framed without giving due opportunity to the assessee. He submitted that the AO acting upon the information about the purchase of immovable property for a consideration of INR 54,84,000/- had re-opened the assessment of the assessee. There was no compliance with the statutory notices so issued in this regard. Therefore, he proceeded *ex-parte* to the assessee and made addition of INR 18,08,066/- being 1/3<sup>rd</sup> share in the property.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A). Before Ld.CIT(A), there was no effective representation on behalf of the assessee. Hence, appeal of the assessee was dismissed.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Ld. Counsel for the assessee submitted that notice of hearing was not received by the assessee and it was subsequently come to knowledge of the assessee that impugned order has been passed. He submitted that in the interest of principle of natural justice, the matter may be restored to the AO for framing assessment afresh after giving adequate opportunity to the assessee.

7. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. He submitted that the assessee was negligent and statutory notices were not complied. Therefore, under these facts, orders of the authorities below deserve to be affirmed.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Undisputedly, the order of the lower authorities is passed in the absence of the assessee. There was no effective representation on behalf of the assessee. Looking to the record, the authorities below have provided some opportunity to the assessee. It cannot be inferred that no opportunity was given by lower authorities to the assessee. It is stated by the assessee that notice of hearing was not received by the assessee. It is stated that the

assessee has very strong case on merit. The source of investment was past saving and the assessee would prove the source if an opportunity is afforded to him. It was further contended that the assessee would suffer irreparable loss and gross miscarriage of justice if the opportunity to prove source of investment is not given to him. In our considered view, the assessee ought to have been vigilant about his case. The Revenue authorities would be justified for proceeding *ex-parte* against the assessee if he fails to respond to statutory notices. However, in the present case, it is stated by the assessee that he did not receive notice of hearing. Non-receipt of notice of hearing would be reasonable cause for non-attending the assessment/appellate proceedings. Therefore, to sub-serve the principle of natural justice, we hereby set aside the impugned order and restore the assessment to the file of AO for making it afresh after giving due opportunity of being heard to the assessee. The assessee is hereby, directed not to seek any adjournment and furnish evidence in support of investment made in immovable property. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 09<sup>th</sup> May, 2024.

**Sd/-**

**(DR.B.R.R.KUMAR)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\* Amit Kumar \*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI