

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

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.656/Del/2024
(ASSESSMENT YEAR 2012-13)**

Hosiyar Singh C/o Anu Jain & Company 272-R, First Floor Near Palika Complex Model Town, Rewari Haryana-123401 PAN-CRUPS 7833N (Appellant)	Vs.	Income Tax Officer Ward-1 Rewari (Respondent)
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Assessee by	Shri Sanjiv Jain, CA
Respondent by	Shri Om Prakash, Sr. DR
Date of Hearing	06/05/2024
Date of Pronouncement	10/05/2024

ORDER

PER S.RIFAUR RAHMAN, AM:

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 28/12/2023 for Assessment Year 2012-13.

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

"1. That the Ld. CIT (Appeal) has erred on facts and in law by confirming the order of Lo Assessing officer arbitrarily without provide due

opportunity and also not decided the grounds of appeal on merits and, instead, dismissed the appeal in limine.

2. That the Ld. CIT (Appeal) has erred on facts and in law by confirming the order of Ld. AO, because reasons recorded by the Ld. AO, Rewari for issuing notice U/s 148 were erroneous. Ld. AO has proceeded on completely wrong factual premises about non filling of ITR as well as wrong premises that assessee has purchase immovable property amounting of Rs. 1,05,00,000/- while the fact is that appellant has only 1/4 share which comes to Rs.28,50,000/- including registration fee and also has duly shown that investment in audited financial statements submitted with the return of income which already available in ITBA portal at the time of reason recording.

3. That on the facts and in the circumstances of the case and in law, Ld CIT(Appeal) erred in sustaining the order passed by Ld AO u/s 147/144 without appreciating that assumption of jurisdiction u/s 148 was by Ld AO without proper and valid service of notices U/s. 148 and 142(1) of I.T. Act during assessment proceedings U/s. 144 by not following provisions of Laws for service under Code of Civil Procedure, 1908 and general Clauses Act. 1897 and under Sec. 282 of Income tax Act, 1961. which is violation of jurisdictional conditions stipulated under the Act.

4. That order passed by Ld. AO is bad in law in as notice U/s 148 is based on mechanical approval of Ld. Pr. CIT, Rohtak which obtained on the basis of suspect and wrong factual premises.

5. That the appellant craves, leave to add, modify and / or delete any of the ground of appeal at the time of hearing of appeal, if deemed necessary, in the interest of justice and equity.”

3. At the outset, the Ld. AR briefly submitted the facts in this case and agreed that Assessing Officer sent several notices, but assessee could not make submission before him, therefore, proceeded to make the assessment u/s 144 r. w. section 147 of the Act, 1961 ('the Act' for short). Further, he agreed that several opportunities were given by the Ld. CIT(A) as well and assessee

could not represent his case due to non-receipt of the notices, however, he submitted that the Ld. CIT(A) has proceeded to dismiss the appeal filed by the assessee *in limine* without deciding the issue on merits. On merits, he submitted that the assessee is not the complete owner of the property sold by him. He is one of the co-owner in the property. He prayed that this issue may be remitted back to file of Ld. CIT(A) for proper adjudication.

4. On the other hand, Ld. DR relied on the order of the lower authorities and submitted that assessee has not utilized the opportunity provided by Assessing Officer as well as Ld. CIT(A). However, he agreed that the order passed by Ld. CIT(A) is *ex-parte* order.

5. Considered the rival submissions and material placed on record. On a perusal of the assessment order and First Appellate Authority order, we find that even though the Assessing Officer and Ld. CIT(A) provided opportunity on several occasions, assessee could not appear nor complied to the notices issued. We observed that Ld. CIT(A) dismissed the appeal filed by the assessee based on the information available on record.

6. Considering the totality of facts and keeping in view the additions/disallowance made by the Assessing Officer, we are of the opinion that assessee should be given one more opportunity of being heard. Accordingly, in the interest of justice, we are of the view that this matter should go back to the file of the Assessing Officer for denovo verification and assessment. Assessee shall cooperate with the proceedings before the Assessing Officer without taking unnecessary adjournments. Needless to say that the Assessing Officer shall give adequate opportunity of being heard to the assessee. Thus, this appeal is restored to the file of the Assessing Officer accordingly.

7. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 10th May, 2024.

Sd/-

(S.RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Dated:10/05/2024
Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI