

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

**BEFORE,
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.9707/Del/2019
(ASSESSMENT YEAR 2010-11)**

Sarita Yadav 292, Rao Fateh Singh Marg, Kapashera New Delhi-110 097 PAN-AAZPY1757B	Vs.	Income Tax Officer Ward-44(4) New Delhi
(Appellant)		(Respondent)

Assessee by	Shri Sandeep Singh, Adv.
Respondent by	Shri Arjun Garg, Sr. DR
Date of Hearing	09/05/2024
Date of Pronouncement	17/05/2024

ORDER

PER S.RIFAUH RAHMAN, AM:

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-15, Delhi ["Ld. CIT(A)", for short], dated 21/10/2019 for Asst. Year 2010-11.
2. The assessee has raised the following grounds of appeal:

"1. On facts and in the circumstances of the case, the learned Assessing Officer has erred in the law and on facts in making assessment u/s 147/144 at Rs.2.72,34,800/- as against no return of income filed by the appellant.

2. That on facts and in the circumstances of the case and in law, the Learned Assessing Officer has erred in law in reopening assessment u/s 147 as the notice u/s 148 was not served in time. The reopening of assessment was bad in law.

3. That on facts and in the circumstances of the case and in law, the Learned Assessing Officer has erred in law in reopening assessment u/s 147 on the basis of material, which did not relate to the appellant. The reopening of assessment was not valid.

4. That on facts and in the circumstances of the case and in law, the Learned Assessing Officer has erred in law in making addition of Rs, 2,70,74,800/- as peak cash credit in a current account as difference of cash deposited and cash withdrawn. The AO ought to have considered the fact that there was cash deposited and cheques issued in favor of Orient Craft Ltd on behalf of Purchasers of Plots and the cash deposited in the bank account of Sarita Yadav belongs to the parties in whose favor sale deeds have been executed.

5. That the appellant craves leave to add, amend, modify or alter the grounds of appeal.

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 Ld. 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 Ld. CIT(A) order, we find that even though the 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 Ld. CIT(A) for proper verification as per law. Assessee shall cooperate with the proceedings before the Ld. CIT(A) without taking unnecessary adjournments. Needless to say that the Ld. CIT(A) shall give adequate opportunity of being heard to the assessee. Thus, this appeal is restored to the file of the Ld. CIT(A) accordingly.

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

Order pronounced in the open court on 17th May, 2024.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 17/05/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI