

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.841/Del/2024

[Assessment Year : 2011-12]

Neeraj Sharma, Ch.No.206-207, Ansal Satyam RDC, Rajnagar, Ghaziabad, Uttar Pradesh-201002. PAN-AYNPS1581M	vs	ITO, Ward-2(5), Ghaziabad.
APPELLANT		RESPONDENT
Appellant by	Shri Akhilesh Aggarwal, Adv. & Shri Govind Aggarwal, Adv.	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	22.05.2024	
Date of Pronouncement	29.05.2024	

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”) dated 26.12.2023 for the assessment year 2011-12.

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

1. *“Because, order of ld. CIT (Appeals) is bad in law and against the facts and circumstances of the case.*
2. *Because, Id. CIT (Appeals) is inherently wrong in dismissing the appeal ex-party, without providing proper opportunity of being heard, more so when Id. AO also passed order ex-party u/s 144 of Act without providing any opportunity of being heard.*
3. *Because, Id. CIT (Appeals) further erred in dismissing the appeal ex-party, whereby neither unconservant villager assessee received any notice nor ld. CIT(A) adjudicated the main issue of non-service of jurisdictional notice u/s 148 with right to defend very action u/s 147-*

148 beside other issues and dismissed appeal summarily against the provisions of section 250/251 of Act and law settled on the issue.

4. *Because, order of ld. CIT(A) is cryptic with mention of two dates in 2023 after five years of filing appeal but without any mention of passing order ex-parte with reason thereof and grounds are dismissed solely for non-compliance but order is passed on the line of limited remand whereby ld. AO is directed to calculate capital gain without allowing exemption u/s 54 F which itself is beyond the powers of first appellate authority.*

Therefore, it is very respectfully prayed that this Hon'ble Court may kindly be pleased to quash the orders of Id. lower authorities with the directions as deemed fit.”

3. At the outset, Ld. Counsel for the assessee submitted and urged that the matter may be sent to the Assessing Officer (“AO”) for framing the assessment afresh after giving reasonable opportunity of being heard. He contended that both the lower authorities have passed impugned orders *ex-parte* to the assessee. The assessee was not afforded adequate opportunity of being heard and the notices sent to the assessee, were not received. He submitted that the issue involved in the present appeal is related to sale of property and claim of deduction u/s 54F of the Income Tax Act, 1961 (“the Act”). He submitted that had the AO given sufficient opportunity to the assessee, the impugned addition would not have been made. He contended that law is well-settled that the Assessing Authority cannot make arbitrary assessment. The AO is under statutory obligation to assess and compute the income of the assessee in accordance with provision of Act.

4. 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 cannot be allowed to take advantage of his negligence. He grossly failed to support his claim of deduction.

5. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Ld.CIT(A) while partly allowing the appeal, held as under:-

V. SUMMARY OF DISCUSSION

5.1. *“During this year, assessee sold an immovable property to M/s Madhuban Realcons Pvt Ltd for Rs 20000000 and there is no Information record about the Indexed cost of acquisition and period of holding of the impugned property further the impugned property is a capital asset being land. In the absence of any material, impugned property was treated as capital asset and after taking into account cost of acquisition Long Term Capital Gain of Rs 25,00,000. In view of this an addition of Rs 2500000 was added back as concealed income.*

<i>Returned Income</i>	<i>Nil (No ITR filed)</i>
<i>LTCG as above</i>	<i>=Rs.25,00,000</i>
<i>Total taxable income</i>	<i>=Rs.25,00,000</i>

Taxpayer has not filed the return of income or disclosed the information regarding sale of land for the assessment year 2011-12. On getting information that taxpayer has sold land @ Rs 20000000 on 29/4/2010 assessee's share according to assessing officer being Rs 2500000, assessing authority u/s 144 r.w.s 147 assessed Long Term Capital Gain @ Rs 2500000 after taking into consideration the cost of acquisition at zero since there was no details forthcoming regarding cost of acquisition. There was no compliance to the 148 notice dt 26/3/2018, 142(1) notices dt 17/9/2018, show cause notice u/s 144 dt 5/10/2018, hearing during appeal proceedings on 16/8/2023 and 25/12/2023. Assessment was ultimately completed under section 144 and appeal proceedings are also decided based on the submissions made by the taxpayer while initiating appeal

proceedings. The assessee has raised a ground regarding claim under section 54F. This is not tenable since the details were not provided during scrutiny assessment proceedings. Considering the facts and circumstances of the case assessing authority has rightfully taxed under LTCG. The assessing officer is requested to call for the sale deed/sale agreement and purchase deed for ascertaining the cost of acquisition. Subject to the verification, addition of Rs.25,00,000/- is upheld.”

6. The above finding of Ld.CIT(A) cannot be sustained **firstly**, on the ground that no sufficient opportunity was given and **secondly**, the Ld.CIT(A) has in fact allowed the appeal for statistical purposes for verification of cost of acquisition which is not in accordance to section 250(4) of the Act. This section reads, “*Ld.CIT(A) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the AO to make further inquiry and report the result of the same to the Ld.CIT(A).*” In this case, Ld.CIT(A) has directed the AO to call for Sale Deed and Sale Agreement and Purchase Deed for ascertaining the cost of acquisition and he upheld the impugned addition of INR 25,00,000/- subject to the verification. Hence, *ex-facie* he failed to exercise the power in accordance with the provisions of Act. Therefore, considering the totality of the facts, the impugned order is hereby, set aside and the issue of assessment restored to the file of AO he would frame the assessment afresh in accordance with law. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 29th May, 2024.

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