

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'D': NEW DELHI)**

**BEFORE Dr. BRR KUMAR, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No:- 2218/Del/2022
(Assessment Year- 2019-20)**

Sh. Brij Bhushan Gupta, 470, Sector-16, Panchkula - 134113 (Haryana).	Vs.	Sh. Naveen Kumar, Office of the Assistant Commissioner of Income Tax, DCIT/ ACIT-INT-TAX, Gurgaon (Haryana.)
PAN No: AHEPG0063A		
APPELLANT		RESPONDENT

Assessee by : Shri V.K. Sabarwal, Adv. and
Shri Rajan Gupta, CA
Revenue by : Shri Vijay B Vasanta, CIT- DR

Date of Hearing : 28.05.2024
Date of Pronouncement : 30.05.2024

ORDER

PER SUDHIR PAREEK, JM

The instant appeal preferred by the assessee against the order dated 22.07.2022 passed by the Income Tax Department, Office of the Learned Assistant Commissioner of Income Tax, [hereinafter referred to as the 'Ld. ACIT(A)] pertaining to Assessment Year 2019-20.

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

“1. That the order passed on 22.07.2022 u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 are perverse to the law and to the facts of the case, are not legal as tenable as the notice issued w/s 143(2) on 31.03.2021 against the filing of ITR on 21.08.2019 was beyond the limit prescribed under the first proviso of Section 143(2) of the Income Tax Act, 1961.

2. That the Assessing Officer was further not empowered as not assuming his valid jurisdiction to assess this case as contained u/s 120 r.w.s. 124 of the Income Tax Act, 1961 while completing assessment u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961, as against the ITR filed to his territorial jurisdiction, the notice was issued u/s 143(2) by the ACIT (NeAC)-1(2)(2) and assessed by DCIT /ACIT-Int.-Taxation, Gurgaon.

3. That even final show cause notice issued on 19.09.2021 as discussed in Para-2.1 of the assessment order, being Sunday as declared holyday for providing insufficient time upto 21.09.2021 to file the reply was further not justified or correct under the law as being provided insufficient time and opportunity, which violates the principles of law and natural justice.

4. That the Assessing Officer failed to appreciate and consider while passing the draft assessment order on 15.04.2021 and final order on 22.07.2022 that the appellant has allotted Plot by HUDA on 23.12.2001 on a tentative cost of Rs. 27,62,760/-, which was enhanced subsequently as per amended bylaws of HUDA, for which the final amount paid by the appellant comes to Rs. 85,30,735/- on which the appellant has claimed cost inflation index on its schedule payments thereof and on the stamp duty and registration charges paid subsequently of Rs. 4,80,500/- to HUDA at the time of getting conveyance deed executed from HUDA, as such the total payment made by the appellant comes to Rs. 90,11,235/-, which the Assessing Officer failed to consider while making further illegal and impugned additions in the hands of the appellant of Rs. 1,51,26,560/- while passing the orders on 22.07.2022.

5. That further illegal and impugned additions made in the income of the appellant of Rs. 15126560/- are illegal as being perverse to the law and to the facts of the case, therefore, not tenable.

6. That charging of interest u/s 234A, 234B, 234C & 234D of the Income Tax Act, 1961 and the penalty initiated in Para 9 of the assessment on the alleged dual charge of presumption of under

reporting which is inconsequence of misreporting of income was further incorrect as invalid under the law and to the facts of the case, as such not tenable.

7. That the appellant assails his right to amend, alter or change any grounds of appeal at any time even during the course of hearing of this instant appeal.”

3. Heard the arguments of both the parties and perused the record before us.

4. The Ld. Counsel has argued that the assessee has filed return of income on 21.08.2019 and the Revenue has issued notice U/s 143(2) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) on 31.03.2021. The Ld. Counsel for the assessee has argued that the due date of issue of notice U/s 143(2) of the Act has expired on 30th September, 2022 and hence the notice issued by the revenue authorities is barred by limitation.

5. Rebutting arguments of the Ld. AR, the Ld. Departmental Representative (Ld. DR) submitted that as per the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, No. 38 of 2020, the limitation of issue of notices stand extended to 31st Day of March, 2021 and hence the revenue authorities have rightly issued notice on 31.03.2021. Since the

matter has been rectify by the Taxation Act, 2020, we hold that arguments of the Ld. Counsel for the assessee cannot be accepted.

6. With regard to allowing indexation by the Assessing Officer, both the parties fairly submitted that the Assessing Officer has not followed the directions issued by the Ld. DRP wherein the additional evidences submitted by the assessee have been duly accepted under Rule 46A and specific directions have been given to the AO. It was submitted by both the parties that the directions issued by the DRP have not been followed by the AO and prayed that the matter referred to AO for giving the due indexation benefit of the amounts paid to HUDA for acquisition of the property.

7. In the result, the issue stands remitted to the file of the AO for passing a fresh order duly following the direction of the Ld. DRP.

8. At this juncture, the Ld. Counsel for the assessee submitted that the AO has also not allowed the indexation on the amount paid on account of interest on the delayed payment of instalments as it is also to be construed as part of cost acquisition. The Ld. Counsel relied on the order of the Co-ordinate Bench of Tribunal (SMC) in the case of Asgard Properties P. Ltd. vs. ITO in ITA No.

3493/MUM/2011 dated 23.11.2012. Both the parties fairly agreed that, for the sake of completeness the issue may also be examined by the AO. In view of the aforesaid, we direct the AO to examine the issue of allowing the payment of interest for the purpose of indexation as per the provisions of Income Tax Act, and take decision accordingly.

Order pronounced in the Open Court on 30.05.2024

Sd/-
(BRR KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 30/05/2024
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	28.5.24
Date on which the typed draft is placed before the dictating Member	28.5.24
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	