

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No:- 2611/Del/2022
(Assessment Year- 2011-12)**

Mr. Asha Ram Sharma, Ghaziabad.	Vs.	ITO, Ward- 1(1), Ghaziabad.
PAN No: BHFPS8112Q		
APPELLANT		RESPONDENT

Assessee by : Shri Rajesh Malhotra, CA &
Ms. Shivangi Kumar

Revenue by : Shri Amit Katoch, Sr. DR

Date of Hearing : 08.05.2024

Date of Pronouncement : 30.05.2024

ORDER

PER SUDHIR PAREEK, JM

This appeal by Assessee is directed against the order of National Faceless Appeal Centre , Delhi [for short hereinafter referred to as the “(NFAC)”] dated 31.08.2022 for Assessment Year 2011-12 on the following grounds of appeal: -

“1. On the facts and in the circumstances of the case and in law Ld.CIT(A), NFAC has erred in deciding the appeal ex-parte without

giving fair & meaningful opportunity to the assessee of being heard. Therefore, the action of Ld.CIT(A) is wrong, illegal, misconceived and unjustified therefore it should be quashed

2. On the facts and in the circumstances of the case and in law the authorities below have not followed the proper procedure prescribed by the law before reopening the case u/s 147/148 of the Act and imposing tax on assessee. The action of authorities below is wrong, illegal, misconceived and unjustified therefore it should be quashed

3. On the facts and in the circumstances of the case and in law the authorities below have erred in concluding the proceedings u/s 147/148. The proceeding initiated u/s 147/148 were time barred and hence bad at law. The action of authorities below is wrong illegal, misconceived, and unjustified therefore it should be quashed

4 On the facts and in the circumstances of the case and in law, notice u/s 143(2) was not properly serviced to the assessee before framing the assessment u/s 147/148 of the act Therefore, the action of authorities below is wrong, illegal, misconceived and unjustified therefore it should be quashed.

5 On the facts of the circumstances of the case and in law the authorities below have erred in confirming the taxable income of assessee at Rs.1,58,79,779/- instead of returned income of Rs.4,39,736/-. The action of authorities below is wrong, illegal, misconceived and unjustified therefore it should be quashed.

6. On the facts of the circumstances of the case and in law the authorities below have erred in confirming the addition of a sum of Rs. 1,54,40,043/- by denying the benefit of section 54B of the Act. The action of authorities below is wrong, illegal, misconceived, and unjustified therefore it should be quashed.

7. On the facts and in the circumstances of the case and in law, the authorities below have erred in confirming the interest charged under Income Tax Act. The action of the authorities below is wrong, illegal, misconceived, and unjustified therefore it should be quashed.

2. At the outset, the Ld. Counsel for the assessee stated that the appeal has been dismissed by NFAC ex-parte without giving fair & meaningful opportunity to the assessee of being heard.

3. Heard rival submissions and carefully scanned the material available before us.

4. We have carefully considered the order of the NFAC. We find that the appeal had been dismissed on the ground of non-compliance of the instant appeal.

5. During the course of hearing, on behalf of assessee / appellant submitted an application / petition for grant of leave under Rule 29 for admission of additional evidence and stated that he was duly attended before Learned Assessing Officer (hereinafter referred to as 'AO') but Ld. AO did not accepted the submissions of him that land in question sold was agriculture land and being an agriculturist and illiterate person. At the time of registration of the sale deed, he could not understand the significance of word "residential", whereas land in question sold was "agricultural", land and it was being used for agricultural purposes with as recorded in "records of revenue. He further submitted that he claimed the exemption of Section 54B being purchase of agriculture land against the capital gain arised on sale of agricultural land which was denied by Ld. AO and thereafter matter went to Ld. CIT(A) / NFAC, but the appeal filed by him was decided ex-parte on being agriculturist, illiterate and fully

dependent on tax practitioner, who did not inform him about the ongoing appellate proceedings in faceless manner.

6. Per contra, Learned Departmental Representative (hereinafter referred to as 'Ld. DR') relied on the order passed by both lower authorities and stated that sufficient opportunity provided to assessee before passing impugned orders.

7. By hearing both side and perusing material placed before us, we are of the humble opinion that justice should not only done but it appears to be done and in order to achieve the noble goal of justice and before reaching any conclusion it is expedient to consider, all the material/ documents in existence and produced and whatever it is, if one more opportunity provided to assessee /appellant, object of justice will be served to some extent. Thus, for this purpose, we are inclined to remit back the matter to Ld. AO with the direction to decide afresh.

8. Consequently, matter is remitting back to the Ld. AO with the direction to decide the matter afresh after affording more effective, meaningful and sufficient opportunity of being heard to the assessee. At the same time, assessee / appellant shall co-operate in proceedings and will not seek unnecessary adjournments for

ensuring expeditious disposal of the matter. Assessee / appellant is at liberty to file / submit any documents / evidence etc. in support of his claim.

9. In the result, this appeal is allowed as indicated above for statistical purpose.

Order pronounced in the Open Court on 30.05.2024

Sd/-
(SHAMIM YAHYA)
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	27.5.24
Date on which the typed draft is placed before the dictating Member	
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	