

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.241/Del/2024, A.Y.2012-13)

Sumit Goyal T-7, Module-11, Mangalam Homes Abhay Khand-3 Indirapuram, Ghaziabad PAN: AKAPG7448L	Vs.	ITO Ward 2(3), Ghaziabad
(Appellant)		(Respondent)

Appellant by	Sh. Sandeep Manakpala, CA
Respondent by	Sh. Anuj Garg, Sr. DR

Date of Hearing	30/05/2024
Date of Pronouncement	31/05/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal of the Assessment Year [In Short, the 'AY'] 2012-13 preferred by the assessee is against the order dated 28.11.2023 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi [In Short, the 'CIT(A)'].

2. The sole issue before us for adjudication is the taxability of unexplained investment of Rs. 14,85,560/-.

3. The relevant facts, giving rise to this appeal, are that the appellant/assessee, an employee of a private company, filed his Income Tax Return (In short, the 'ITR') of the relevant year on 23.07.2012 declaring income of Rs.3,08,950/-. Later, the case of appellant/assessee was reopened based on the AIR information that he had purchased a flat in Mangalam Group Housing Society, Ghaziabad for Rs.31,32,000/-. The reopened assessment was completed under section 147/143(3) of the Act, 1961 (In short, the 'Act') on 28.12.2019 at income of Rs.36,70,510/-wherein the AO taxed entire purchase cost of the flat as unexplained investment under section 69 of the Act.

4. Aggrieved, the appellant/assessee filed appeal before the CIT(A), who allowed part relief. The unexplained investment of Rs.14,85,560/- sustained by the Ld. CIT(A) was challenged by the appellant/assessee before the Tribunal.

5. The Ld. Authorized Representative (In short, the 'AR') contended that the sum of Rs.14,85,560/- was received from the relative of the appellant/assessee. The creditworthiness and the source thereof were explained before the Assessing officer (In short, the 'AO'). However, the AO did not conduct any enquiry from them by issuing notice under section 133(6) of the Act. The Ld. AR further submitted that the

provisions of Section 69 of the Act were not applicable in this case as the entire investment amount were duly found recorded in the bank account of the appellant/assessee and he had offered detailed explanation justifying the source thereof along with the creditworthiness of the persons from whom the sum was taken/borrowed for purchasing the property. The Ld. AR placed reliance on the decision of the Cuttack Bench of ITAT in the case of Mr. Tapan Kumar Bhuyan, ITA No. 120 to 123/CTK/20/CTK/2023, Kishinchand Chellaram, 1980 AIR 2117. The Ld. AR also prayed for restoring the matter back to the AO as the appeal was decided ex-parte as the appellant/assessee failed to comply statutory notices.

6. We have heard both the parties and perused the material; available on the record. We are of the considered view that the appellant/assessee deserves reasonable opportunity of being heard to make shortcomings or non-compliances at the AO level. In view thereof, without offering any comment on merit of the case we deem it fit to set aside the impugned order and remit the matter back to the file of the AO for the assessment afresh on the taxability of unexplained investment of Rs.14,85,560/. The appellant/assessee should ensure compliances during the set-aside proceeding before the AO. The Ld. AO is also required to provide reasonable opportunities

of being heard to the appellant/assessee before deciding the case on merit.

7. In view of the above, the appeal of the appellant/assessee is allowed for statistical purposes.

Order pronounced in open Court on 31st May, 2024

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 31/05/2024
Binita, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI