

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.972/Del/2024  
[Assessment Year : 2012-13]**

Prateek Dev, III-A, 281, Sector-3, Vaishali, Ghaziabad-201010. <b>PAN-ASMPD4867E</b>	vs	ITO, Ghaziabad.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Raghuraj Singh, Advocate	
<b>Respondent by</b>	Shri Om Parkash, Sr.DR	
<b>Date of Hearing</b>	03.06.2024	
<b>Date of Pronouncement</b>	27.06.2024	

**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”), Delhi dated 20.12.2023 for the Assessment Year (“AY”) 2012-13.

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

1. *“That the impugned Assessment order passed by the Hon'ble CIT (A) is bad in law, wrong on facts and against the Principal of natural justices hence is unsustainable.*
2. *That the notice u/s 143(2) not issued against Return filled on 03/11/2019 and that is a mandatory requirement, and therefore, proceedings are void ab initio and contrary to the provisions of the Act. Honorable Supreme Court has held that the issue of notice u/s. 143(2) of the I.T. Act is mandatory and not procedural; hence assessment order has to be quashed.*
3. *That the Ld Assessing Officer erred in making addition of Rs 4447000 as the order passed U/s 143(3)/147 is invalid, illegal and void ab*

*initio as the statutory provisions have been given a total go bye and/or violated. Appellant has submitted his reply on dated 3rd November 2019. But Ld Assessing Officer has not given opportunity of being heard before making their addition under section 143(3)/147. This amounts to gross violation of principles of natural justice and the order is liable to be set aside. Letter under section 144 was issued by the Ld. A.O. on dated 06-12-2019 for final hearing on dated 10-12-2019 But the show cause notice u/s 144 was dispatched from department on dated 10-12-2019 and same was received by the appellant on dated 11-12-2019 at 4.50 P.M. ie on the date of ex-party assessment order passed by the Ld. A.O. Copy of post office track consignment attached for your kind reference. Accordingly, the principles of natural justice were violated in as much as no fresh notice was issued and the order was passed without affording an opportunity to the appellant to put forth her case.*

4. *That On 3rd November 2019 the appellant in response to notice u/s 142(1) of the IT Act submitted the Income Tax return along with required schedule and request to the Ld. A.O for providing the reasons recorded for initiating proceeding u/s 147 of Income Tax Act 1961 by the department at his address or mail id. But No response was received from the Ld. AO in this regard. No reason provided by the concerned Ld. A.O and thereafter passed the Assessment order That on the facts and in the circumstances of the case, the impugned exparte assessment framed by AO is void ab initio for want of mandatory service of reason recorded for opening the ca se u/s 148 to the appellant.*
5. *That the impugned Assessment order passed by Ld. Assessing Officer, Ghaziabad is a clear cut case of misunderstanding and wrong interpretation of Law.*
6. *That the appellant crave leave to add, alter, amend, delete or modify any or more of the ground of appeal before or at the time of hearing.”*

3. Facts giving rise to the present appeal are that in this case, the Assessing Officer (“AO”) was having information regarding purchase of immovable property by the assessee for a consideration of INR 44,47,000/ during the Financial Year (“FY”) 2011-12. Therefore, the case of the assessee was re-opened for assessment u/s 147 of the Income Tax Act, 1961 (“the Act”). A notice u/s 148 of the Act was issued and duly served upon the assessee. However, there was no representation on behalf of the assessee. Thereafter, after giving statutory notices issued u/s 142(1) of the Act to the assessee, the AO passed an *ex-parte* assessment order and assessed the income of the assessee at INR 44,47,000/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal of the assessee on the basis that there was no compliance by the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Apropos to the grounds of appeal, Ld. Counsel for the assessee contended that the assessee was not afforded adequate opportunity of being heard and the assessment has been framed *ex-parte* to the assessee. He contended that it can be seen from the records that adequate opportunity was not granted to the assessee to represent his case. He further contended that in the absence of sufficient opportunity, serious prejudice was caused to the assessee. He contended that to sub-serve the principle of natural justice, adequate opportunity may be granted to the assessee to represent his case. He contended that matter may be restored to the AO and he may be directed to provide

sufficient opportunity of hearing in the interest of natural justice. He contended that it is well-established law that no one should be condemned unheard.

7. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. He contended that there was no compliance on behalf of the assessee and the assessee has been negligent throughout the assessment proceedings. Therefore, the assessee should not be permitted to take advantage of its own negligence.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on records and gone through the orders of the authorities below. It is seen from the assessment record that as per the AO, a notice dated 29.03.2019 was issued u/s 148 of the Act to the assessee. Thereafter, another notice dated 03.05.2019 was issued to the assessee. In response thereto, father of the assessee, Shri Rajveer Singh attended the proceedings and hearing was fixed on 25.05.2019 but no one attended the hearing on the fixed date i.e. 25.05.2019. Thereafter, the AO gave a final notice dated 06.12.2019 issued u/s 144 of the Act, to the assessee. In response thereto, there was no compliance on behalf of the assessee. As it is seen from the records that the assessee was asked to appear on 10.12.2019 vide notice dated 06.12.2019 and the impugned assessment order was passed on 11.12.2019. It is pointed out by the Ld. Counsel for the assessee that the notice dated 06.12.2019 was received on 11.12.2019 at 4.50 P.M. on the date impugned *ex-parte* order passed by the AO. This fact is not rebutted by the Revenue. On the contrary, the contention of the assessee is backed by material evidence. Therefore, looking to the facts of the

present case, I am of the view that non-providing of further opportunity to the assessee, caused serious prejudice to the assessee. Therefore, to sub-serve the principle of natural justice, I hereby set aside the impugned order and restore the assessment to the file of AO to make assessment afresh after providing adequate opportunity of being heard to the assessee. All other grounds related to validity of re-opening of assessment, are also restored to AO for deciding them by way of speaking order. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 27<sup>th</sup> June, 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