

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

**BEFORE SHRI C. N.PRASAD, JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.753/Del/2024, A.Y. 2010-11**

Rati Ram Yadav S/o Sri Maha Singh VPO Nakhrola Gurgaon-122001 PAN : AABPY6152A		Income Tax Officer Ward-3(5), Gurgaon-122001
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. V. Rajakumar, Advocate
Respondent by	Sh. Vivek Vardhan, Sr.DR

Date of Hearing	10/06/2024
Date of Pronouncement	05/07/2024

**ORDER**

**PER AVDHESH KUMAR MISHRA, AM**

The instant appeal of the Assessment Year [In short, the 'AY'] 2010-11 filed by the assessee is against the order, dated 27.12.2023, of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi [In Short 'the CIT(A)'].

2. The appellant/assessee has released following grounds: -

*"On the facts and in the circumstances of the case and in law the Ld. CIT(A) at NFAC, Delhi erred in confirming the following actions of the Assessing Officer-*

1. *Dismissing appeal against order passed u/s 144/147 of the I.T.Act, 1961 without providing due and adequate opportunity of hearing.*
2. *Confirming the following actions of the Assessing Officer*
  - a. *Initiating reassessment proceedings u/s 147/148 of the Income-tax Act, 1961, without there being any valid reason to believe of escapement of income liable to tax;*
  - b. *passing order u/s 144/147 of the income tax Act, 1961 without providing reasons recorded for reassessment*
  - c. *passing order u/s 144/147 of the Act determining taxable income at Rs. 49,64,240/- without providing due adequate opportunity of hearing.*
  - d. *Making following additions to returned income:*
    - i. *Rs. 46,03,292/- being the amount of cash deposits in bank, treating the same as unexplained;*
    - ii. *Rs. 3,60,000/- on account of alleged interest income.*
  - e. *Initiating penalty proceedings u/s 271(1)(b) and 271(1)(c) of the Act*
  - f. *Charging interest u/s 234A,234B and 234C of the Act.*

*The above action being arbitrary, fallacious, unwarranted and illegal must be quashed with directions for appropriate relief.”*

2.1 In nutshell, the appellant/assessee has challenged the impugned appellate order on four issue (i) initiation of reopening proceedings, (ii) quantum addition made/income determined in reassessment proceeding, (iii) initiation of penalty and (iv) charging of interest under the Income Tax Act, 1961 (In short, the ‘Act’).

3. The relevant facts giving rise to this appeal, in brief based on the assessment order, are that the case of the assessee was flagged by the Income Tax System as a NMS (Non-filers Monitoring System) case (These are the cases of those persons who entered into high value transactions with potential tax liabilities have not filed any Income Tax Return (In

short, the 'ITR). The case of the assessee was reopened under section 147 read with section 148 of the Act on the reasoning that the appellant/assessee had not offered Rs.49,64,240/- as his income (cash deposits aggregating to Rs.46,03,292/-in saving bank account maintained in Gurgaon Gramin Bank, Nakhrola and interest of Rs.3,60,000/- received from Vegneshwara Developers Pvt. Ltd.) chargeable to tax. The assessee is a non-filer. The appellant/assessee never made any compliance during the reopened assessment proceedings in response to notices under section 148 and 142(1) of the Act though the Assessing Officer (In short, the 'AO') provided sufficient opportunities of being heard. Since there was no compliance during the reopened assessment proceedings; therefore, the AO completed ex-parte assessment at income of Rs.49,64,240/- under section 144/147 of the Act. Aggrieved, the appellant/assessee preferred appeal before the CIT(A), who dismissed the appeal as there was no compliance during the appellate proceedings.

3.1 The facts of the case mentioned by the Ld. CIT(A) were quite different than those mentioned by the AO. The facts mentioned by the CIT(A) are that the original assessment in this case was completed at income of Rs. 3,24,71,206/- vide order dated 24.11.2015 wherein additions of Rs. 65,49,420/- as Long-Term Capital Gains and business

income of Rs. 2,55,14,166/- were made by the AO; however, the Ld. CIT(A) vide order dated 31.03.2017 held both the additions aggregating to Rs. 3,20,63,866/- as long-term capital gains only.

4. The Ld. AR prayed for setting aside of the case and restoring matter to the file of the AO for de novo assessment. The Ld. Sr. DR appeared in agreement with the prayer of the Ld. AR.

5. We have heard both the parties and have perused the material available on the record. In the interest of justice and considering all the afore-stated observations, we are of the considered view that the appellant/assessee deserves reasonable opportunity of being heard to make shortcomings or non-compliances. 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 de-novo consideration. The appellant/assessee should ensure compliances during the set-aside proceeding before the AO. Needless to say, that the AO should provide reasonable opportunities of being heard to the appellant/assessee before deciding the case on merit.

6. Since the core issue has been set aside and restored back to the file of the AO; therefore, remaining grounds of appeal become

infructuous/academic in nature; hence, remaining grounds of appeal are not adjudicated separately.

7. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in open Court on 05 July, 2024

**Sd/-**

**(C.N.PRASAD)  
JUDICIAL MEMBER**

**Sd/-**

**(AVDHESH KUMAR MISHRA)  
ACCOUNTANT MEMBER**

Dated:05/07/2024

*Binita, Sr. PS*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI