

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

**BEFORE,  
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2357/Del/2023  
(ASSESSMENT YEAR 2009-10)**

Shimla HN 816 Ground Floor Niti Khand, Indrapuram Ghaziabad-201 014 PAN-CCJPS9685Q	Vs.	Income Tax Officer Ward-2(3) Ghaziabad
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Raghuraj, Adv.
Department by	Shri Om Prakash, Sr. DR

Date of Hearing	27/06/2024
Date of Pronouncement	05/07/2024

**ORDER**

**PER S.RIFAUH RAHMAN, AM:**

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 13/06/2023 for Assessment Year 2009-10.
2. The brief facts of the case are, as per the information available with the Assessing Officer that Smt. Shimla, D/o Late Shri

Ramnath, Vill:- Makanpur, Loni, Ghaziabad had sold immovable property by an amount of Rs.52,41,657/- during the Financial Year 2008-09 relevant to Assessment Year 2009-10. Since, case was referred to the Assessing Officer on the basis of Non PAN AIR Report. The Assessing Officer has issued 148 notice. As per the notice submitted before us which is filed in Paper Book at page 26-27. The Assessing Officer has merely sent the notice with the address Smt. Shimla, Vill:- Makanpur, Ghaziabad. Since, the notice was issued with the improper address, it is brought to our notice that assessee has not received any notice, and, accordingly, due to non representation of the case, the assessment was completed u/s 147/144 of the Income Tax Act, 1961 ('the Act' for short) based on the information/address available with the Assessing Officer. It is relevant to notice that at the time of passing the assessment order, the Assessing Officer was not aware of the PAN details of the assessee. The assessee filed an appeal before the Ld. CIT(A) and raised several grounds of appeal. We observed that the Ld. CIT(A) has issue several notices which is listed at page-2 of the appellate order. Since, there is no compliance from

the assessee side and also the Ld. CIT(A) noticed that a ground was raised by the assessee for not granting of proper opportunity in this regard. The Ld. CIT(A) referred the issue to Assessing Officer and received the remand report. Based on the remand report relying on the several case laws, the Ld. CIT(A) has partly allowed the grounds raised by the assessee. The Ld. CIT(A) observed that the property purchased by the assessee is a joint property and assessee has received 50% share and accordingly, he restricted the addition to the extent of 20,02,059/- instead of 26,20,830/- after allowing indexed costs of acquisition available to the assessee.

**3.** Aggrieved with the above order, the assessee preferred an appeal before us raising 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 148 being alleged to be issued on 15th. March 2016 is issued to non-existing/ incorrect address, which is never served on assessee beside notice is issued without any reasons to believe' being reasons itself are wrong hence is an invalid notice and subsequent proceedings/order is illegal.*

*3. That The notice u/s 148 is issued mechanically on the basis of AIR information only without any independent application of mind/satisfaction/enquiry by AO as well as of approving authority merely*

*to conduct roving enquiry that too with incorrect 'reasons which is beyond jurisdiction and subsequent proceedings/order is illegal and the same confirmed by Ld CIT (A).*

*4. That the impugned Assessment order passed by the Hon'ble CIT (A) is wrong, having no base and against the circumstance of the case.*

*5. That on facts and circumstances of the case and in Law, the assessing officer had erred in assessing the income tax of the appellant at Rs. 15,59,720.00 please be deleted.*

*6. That on facts and circumstances of the case and in Law. That The addition made by the A.O. is devoid of any merits and is away from the factual matrix. The Submission is made by the Assessee during Appellate Authority but not considered. The Assesses had sold residential property for Rs.26,20,830/- on dt. 23.04.2008 during the year and purchased a residential flat for Rs 34.89 Lac on dt.14/03/2011 which entire amount is exempted u/s 54F of the Income Tax Act 1961 Therefore, there cannot be any tax liability and the said cash deposited explained as u/s 68 of Income tax act 1961.*

*7. That the impugned assessment order is arbitrary, illegal, bad in law in violation of rudimentary principal of contemporary jurisprudence.*

*8. That the provisions of section 271(1) (C) is not justify the case of the applicant.*

*9. That the impugned Assessment order passed by Ld. Assessing Officer, Noida is a clear cut case of misunderstanding and wrong interpretation of Law.”*

**4.** At the time of hearing, the Ld. AR brought to our notice the appeal was filed with the delay of 7 days and filed an affidavit in this regard and prayed for condonation of delay. The DR objected for condonation of delay.

**5.** After considering the reason for delay, we condone the delay and proceed to hear of the case.

**6.** At the time of hearing, the Ld. AR raised the issue of non serving of notice with the improper address and, subsequently, preferred not to press the same. He brought to our notice findings of the Ld. CIT(A) and the relevant remand report. He prayed that Ld. CIT(A) and the Assessing Officer has determined the capital gain at Rs.20,02,059/- and submitted that the assessee has purchased another property out of the proceeds of the above sale consideration and prayed that assessee is eligible to claim the exemption u/s 54F of the Act.

**7.** On the other hand, the Ld. DR objected for the non serving of the notice and with regard to determination of capital gain, he has no objection to remit this issue back to the file of Assessing Officer and submitted that assessee has not raised the issue of section 54F before the authorities also he is in agreement that assessee had not made proper representation before the Assessing Officer.

**8.** Considered the rival submissions and material placed on record. I observed that the reassessment proceeding was initiated in the case of the assessee on the basis of Non PAN AIR Report and assessee has not being served proper notice, and, accordingly,

assessment also was completed without any submissions from the assessee. The Ld. CIT(A) has considered the plea of the assessee and given certain relief, however, he determined the taxable income under the head capital gains according to  $\frac{1}{2}$  share of the assessee and even assessee has not made any proper submissions before the Ld. CIT(A) with regard to exemption u/s 54F. In the present case, the assessee has submitted that the assessee has proceeded with the appellate proceedings with improper data and represented with half hearted with the belief that the assessment is bad in law. In our considered view, this issue may be remitted back to the file of Assessing Officer to consider the entire submissions of the assessee and with the direction that if assessee has invested in the property and eligible to claim deduction u/s 54F, the same should be granted to the assessee after giving proper opportunity of being heard to the assessee. Accordingly, the issue of grant of relief u/s 54F is remitted to the file of Assessing Officer. Accordingly, appeal filed by the assessee is allowed for statistical purposes.

9. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced on 5<sup>th</sup> July, 2024.

Sd/-

**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 05/07/2024

*Pk/sps*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DEL