

IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'G' : NEW DELHI)  
BEFORE SHRI G.S. PANNU, VICE PRESIDENT  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER  
ITA Nos. 3734 & 3735/Del/2023  
Asstt. Year : 2012-13

SH. SHUBHRADEEP NIGAM, VS. ITO, WARD-2(2)(3),  
1206, GAUR GLOBAL VILLAGE, GHAZIABAD  
CROSSING REPUBLIK U.P. 201 002  
CHIPIYANA, GHAZIABAD  
U.P. – 201 106  
(PAN: ACBPN9476A)  
**(Appellant)** **(Respondent)**

Appellant by : Shri Vineet Garg, CA.  
Respondent by : Shri Ram Dhan Meena, Sr. DR

Date of Hearing	20.06.2024
Date of Pronouncement	10.07.2024

**ORDER**

**PER VIMAL KUMAR, JM**

The appeals filed by the assessee are against separate orders dated 30.10.2023 of Ld. Commissioner of Income Tax (Appeals) (hereinafter Ld. CIT(A)), NFAC Delhi having arisen from order dated 7.10.2019 of Income Tax Officer (hereinafter Ld. AO), Ward-2(2)(3), Ghaziabad under section 144/147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in the quantum addition and penalty order dated 29.3.2022 passed by the Ld. ITO, NFAC, Delhi pertaining to assessment year 2012-13. Since the aforesaid appeals are relating to same assessment year, hence, the same were heard together and are being disposed of by this common order.

2. The grounds raised in Quantum appeal i.e. ITA No. 3734/Del/2023 read as under:-

- “1. That the ld. CIT(A) has erred on facts and in law in upholding the impugned order passed by the AO, which is without jurisdiction, contrary to law, equity and justice and facts and material on record, arbitrary, based on conjectures and surmises, passed without application of mind.
2. That the ld. CIT(A) has erred on facts and in law in passing the order without granting sufficient opportunity of being heard to the appellant before passing the order under section 250 which is against the principles of natural justice.
3. That the ld. CIT(A) has erred on facts and in law in upholding the reassessment made by the AO u/s. 147 is without jurisdiction, bad in law because the reassessment has been made merely on the basis of some information. There is no cogent material for forming reason to believe and to make an assessment u/s. 147.
4. That the ld. CIT(A) has erred on facts and in law in upholding the reassessment made u/s. 147 being without jurisdiction, bad in law because the notice issued u./s 148 of the Act was not served on the assessee.
5. That the Ld. CIT(A) has erred on facts and in law in upholding the reassessment proceedings without appreciating that copy of appropriate approval from the PCIT was not provided to the appellant, which itself makes the whole procedure in contravention of law and the principle of natural justice.
6. That the Ld. CIT(A) has erred on facts and in law in upholding the addition made by the AO of Rs. 24,09,961/- on account of unexplained investment.
7. The appellant craves leave and sanction of the Hon’ble ITAT to file additional evidence, if so required for proper prosecution of the case, based on facts and circumstances, which has not been or could not be produced or filed before lower authorities either because proper and sufficient opportunity was not provided or because it was not solicited or its need was not appreciated.
8. The appellant craves leave to and permission of the Hon’ble ITAT to add or to alter any of the grounds of appeal at any time up to the final decision of the appeal.”

3. The grounds raised in Penalty Appeal i.e. ITA No. 3735/Del/2023 read as under:-

*“1. That the Ld. CIT(A) has erred on facts and in law in upholding the impugned order passed by the AO, which is without jurisdiction, contrary to law, equity and justice and facts and material on record, arbitrary, based on conjectures and surmises, passed without application of mind.*

*2. That the Ld. CIT(A) has erred on facts and in law in passing the order without granting sufficient opportunity of being heard to the appellant before passing the order under section 250 which is against the principles of natural justice.*

*3. That the Ld. CIT(A) has erred in upholding the penalty notice dated 8.10.2019 which was invalid, vague and ambiguous notice.*

*4. The Ld. CIT(A) has erred in upholding the imposition of penalty of Rs. 5,92,352/- on account of additions made to the taxable income of the assessee by the AO.*

*5. The appellant craves leave and sanction of Hon'ble ITAT to file additional evidence, if so required for proper prosecution of the case, based on facts and circumstances, which has not been or could not be produced or filed before lower authorities either because proper and sufficient opportunity was not provided or because it was not solicited or its need was not appreciated.*

*6. The appellant craves leave to and permission of the Hon'ble ITAT to add to or alter any of the grounds of appeal at any time up to the final decision of the appeal.*

4. The brief facts of the case are that, an information was received from the O/o the DIT(T&J), Pr. CCIT, UP (West) and Utrakhand region, Kanpur that the assessee had purchased immovable property of Rs. 22,52,300/- during the FY 2011-12 relevant to AY 2012-13. Ld. AO noted that after recording reasons and obtaining prior approval from the PCIT, Ghaziabad, notice u/s. 148 of the Act was issued on 30.3.2019 and served upon the assessee. Later on, Notice u/s. 142(1) dated 23.8.2019 alongwith questionnaire was issued requiring various details /

information and documents from the assessee regarding source of investment in purchase of property. But the assessee has not made any compliance. Ld. AO further noted, that accordingly, show cause notice u/s. 144 of the Act dated 20.9.2019 was issued to the assessee for explaining the unexplained investment, but the assessee has not availed the opportunity and not submitted any reply. Accordingly, Ld. AO noted that the assessee had purchased property for Rs. 22,52,300/- and paid stamp duty of Rs. 1,57,661/- (7% at the rate of Rs. 22,52,300/-). Ld. AO observed that assessee had made total investment of Rs. 24,09,961/- which remained unexplained and added the same vide order dated 7.10.2019 u/s. 144/147 of the Act.

3. Aggrieved with the assessment order, assessee appealed before the Ld. CIT(A). Vide order dated 30.10.2023 the appeal was dismissed.

4. Appellant/Assessee against the order dated 30.10.2023, preferred present appeal.

5. Learned Representative for the appellant/assessee submitted that Ld. CIT(A) erred in upholding the reassessment made u/s. 147 being without jurisdiction, bad in law because the notice issued u/s. 148 of the Act was not served on the assessee and also erred in upholding the reassessment proceedings without appreciating that copy of appropriate approval from the PCIT was not provided to the appellant, which itself makes the whole procedure in contravention of law and the principle of natural justice and dismissed the appeal of the assessee.

6. Learned Representative for the department submitted that the requisite notices were issued to the assessee, who failed to appear.

7. From perusal of the records and in light of the rival contentions, it is crystal clear that Ld. CIT(A) dismissed the appeal of the assessee by upholding the exparte order of the Assessing Officer and did not appreciate the fact that there was fundamental as to whether notice

issued u/s. 148 of the Act was served on the assessee or not. In view of the factual matrix and in the interest of natural justice, we deem it fit and proper to remit back the issues in dispute to the file of the Ld. CIT(A) with the directions to decide the same on merits. We hold and direct accordingly.

**ITA No. 3735/Del/2023 (Penalty Appeal)**

8. Since we have already remitted back the issues to the file of the Ld. CIT(A) in the quantum appeal, hence, the issues raised in the penalty appeal also stands remitted back to the file of the Ld. CIT(A) with the similar directions. We hold and direct accordingly.

9. In the result, both the appeals of the assessee are allowed for statistical purposes.

Above decision was pronounced on 10.07.2024.

sd/-

(G.S. PANNU)  
VICE PRESIDENT

sd/-

(VIMAL KUMAR)  
JUDICIAL MEMBER

Dated: 10.07.2024.

**SR BHATNAGAR**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Asstt. Registrar, ITAT, New Delhi