

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1558/Del/2024  
[Assessment Year : 2009-10]**

Ashok Kumar Chauhan, New Kila Road, Murari Nagar, Khurja, Bulandshahr, Uttar Pradesh-203131. <b>PAN-BHFPC1571B</b>	vs	ITO, Ward -3(1), Bulandshahr.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Shailendra Johri, Adv.	
<b>Respondent by</b>	Shri Sanjay Kumar, Sr.DR	
<b>Date of Hearing</b>	22.08.2024	
<b>Date of Pronouncement</b>	11.09.2024	

**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 06.02.2024 for the assessment year 2009-10.

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

1. *"That the CIT(A) failed to consider that the Assessment order under section 144/ 147 of the Income Tax Act 1961 dated 05.12.2016 has been passed ex-parte without providing the appropriate opportunity of hearing to the appellant.*
2. *That the CIT (A) failed to consider the status of the appellant that he is an agriculturist and doing the agriculture for the past several years and the appellant had sold a piece of his inherited agriculture land for Rs.5350000.00 in the F.Y 2005-2006 and had purchased the agriculture land for Rs.3000000.00 during the year 2008-2009 from his real sister Smt. Sharda Devi and the Purchase Deed was executed on 15.10.2008. It transaction was between the real brother*

*and sister hence actually no consideration was made at the time of the execution of the Registry because the appellant had paid the consideration in parts to his sister Smt. Sharda Devi over past several years out of his agricultural income and out of sale proceeds of his previous sale of the agricultural land. It has been wrongly made addition as an unexplained investment u/s 69 for Rs.3241360.00.*

- 3. That the CIT(A) failed to assess the service of the notices because the notices were not served properly on the appellant.*
- 4. That the CIT(A) has failed to consider that the Ld.AO has not follow the rule of natural justice which was a prominent feature for any order to be valid and hence the order passed under section 144 was void-ab-initio.*
- 5. That the CIT(A) failed to envisage the health issue of the appellant and reject the appeal which is against the law and unwarranted on the facts and untenable in law.*
- 6. That the CIT(A) failed to consider that two separate assessment orders are passed for a same assessment year by the Ld.AO. Which is negligence on the part of the Department.*
- 7. That the CIT(A) failed to follow the procedure for the ex parte order as prescribed in the Income Tax Act 1961.*
- 8. That the order passed under section 250 is arbitrary, unwarranted on the facts and untenable in law.*
- 9. That the order passed by the CIT(A) under section 250 is liable to be set aside and an appropriate opportunity to the appellant should be provided in the interest of justice.*
- 10. That the appellant craves to add, alter, delete, modify or withdraw any of the above grounds of Appeal.”*

3. Facts giving rise to the present appeal are that in this case, the assessee was in receipt of AIR information regarding purchasing of two immovable property for a sum of INR 30,00,000/- during the relevant Financial Year. Therefore, the case of the assessee was re-opened and notice u/s 148 of the Income Tax Act, 1961 ("the Act") was issued and duly served upon the assessee. In response thereto, there was no compliance on behalf of the assessee. Thereafter, the Assessing Officer ("AO") proceeded to make assessment *ex-parte* to the assessee. The AO made addition of INR 32,41,360/- and assessed the income at INR 32,41,360/- u/s 144 r.w.s. 147 of the Act vide order dated 15.12.2016.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A). Before Ld.CIT(A) also, there was no representation on behalf of the assessee. Therefore, the impugned order was passed *ex-parte* to the assessee and the appeal was dismissed *ex-parte* to 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 submitted that lower authorities have failed to appreciate the facts in right perspective. He submitted that infact there was no actual sale consideration paid by the assessee to purchaser as the purchaser was the real sister of the assessee. He further submitted that the assessee should have been given adequate opportunity of being heard.

7. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. He submitted that the assessee has been throughout negligent and did not furnish the requisite details as and when called for by the lower authorities and did not represent his case therefore, no lenient approach to be adopted to absolve the assessee from the liability of paying due taxes.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The assessee has placed on record certain evidences which in my considered view, are material for deciding the taxability of transaction. The lower authorities ought to have verified the correctness of claim of assessee regarding his claim about the land and payment of sale consideration in part. Since, there was no effective representation on behalf of the assessee therefore, to sub-serve the interest of justice, I hereby set aside the *ex-parte* order and restore the assessment to the file of AO to make assessment afresh after giving due opportunity to the assessee. The AO would verify the correctness of claim of the assessee about the land being agricultural and payment of sale consideration thereof by the vendor. If he finds that claim is correct, may give relief as available under law. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 11<sup>th</sup> September, 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