

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.3021/Del/2023
[Assessment Year: 2015-16]**

Sh. Mukesh Kumar Garg, D-792, Chawla Colony, Ballabgarh, Harayan-121004	Vs	Income Tax Officer, Ward-1(5), Faridabad, Haryana
PAN-AYHPG3774G		
Assessee		Revenue

Assessee by	Sh. Saksham Agarwal, CA & Sh. Somil Agarwal, Adv.
Revenue by	Sh. Ramdhan Meena, DR

Date of Hearing	09.10.2024
Date of Pronouncement	09.10.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal filed by the assessee is directed against the order dated 30.05.2022 of the National Faceless Appeal Centre, Delhi, relating to Assessment Year 2015-16.

2. In this case, the AO on the basis of information received regarding the investment of Rs.1,05,29,860/- towards purchase of flat from M/s ASM India Infraheights Ltd., issued a notice u/s 148 on 19.12.2018. The assessee, in response to show cause notice dated 07.11.2019 submitted his reply on 13.11.2019 in which he denied making of any investment as detailed in the information available with the AO. It was also submitted that if desired the AO could make necessary verification from the office of Registrar or any

other regulatory authority at Aligarh. The assessee also submitted that necessary enquiry may also be made from M/s ASM India Infraheights Pvt. Ltd. as to whether any such flat have been sold by the company to the assessee. Regarding the reference of certain documents found from the residence of his brother-in-law Mr. Rajesh Mangla at the time of search in his case, the assessee submitted that it was stated by Mr. Rajesh Mangla that no investment was made by the assessee for the purchase of the aforesaid flats. Further, it was also requested to supply the evidences, if any, which shows the ownership of the above flat in his name or investment made by him in these flats. Thereafter, the AO discussed about the evidences available before him and in absence of any explanation of the assessee made an addition of Rs.1,05,29,860/- towards unexplained investment in the aforesaid flat vide order dated 10.12.2019 u/s 143(3) r.w.s 147 of the Act.

3. Aggrieved with the order of the AO, the assessee appealed before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal ex-parte on the ground that the assessee failed to appear before him despite opportunities given on 25.03.2021, 19.03.2022, 25.03.2022 and 26.05.2022. He further held that the material on record shows that that the addition had been dealt with cogently by the AO in the assessment order and there was no material on record to warrant interference in the order of the AO.

4. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before us.

5. At the outset, the ld. AR submitted that the ld. CIT(A) decided the appeal *ex-parte* without considering the facts and circumstances of case and requested that the matter be set-aside to the file of the ld. CIT(A) to decide the appeal afresh after giving due opportunity of being heard to the assessee.

6. The ld. DR strongly supported the orders of the authorities below and opposed the setting-aside of the appellate order as requested by the assessee.

7. We have considered the rival submission and perused the material available on record. In this case, the assessee did not appear before the Ld. CIT(A) despite opportunities given. However, it is also seen that the assessee has denied having made any investment in the flats as mentioned by the AO. Further, the AO did not make any further verification independently or with the any third party being the Registrar or the builder in view of the denial by the assessee of having made the investment the property as alleged by the AO. Therefore, in view of the above denial by the assessee and in absence of any independent verification by the AO, the addition of Rs.1,05,29,860/- made by the AO and confirmed by the Ld. CIT(A) cannot be sustained despite the fact that the assessee did not appear before the Ld. CIT(A) during the appellate proceedings.

Further, in the paper book filed by the assessee, it is seen that the amount of Rs.1,05,29,860/- added in the hands of the assessee has also been added in the hands of the brother-in-law Shri Rajesh Mangla in the order u/s 153A dated 27.05.2021 as appearing on page no.279 to 281 of the paper book.

7.1. Therefore, considering the entire facts in perspective and in order to subserve the interests of justice, the order of learned CIT(A) is set aside and the matter is restored to the file of Ld. CIT(A) for fresh adjudication after providing reasonable opportunity of being heard to the assessee. Grounds of appeal are allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 9th October, 2024.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 09.10.2024.

Shekhar

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,