

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "H", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA NO. 3658/Del/2024		
A.YR. : 2016-17		
VIJAY KUMAR, 419, COMPETENT HOUSE, F.14, CONNAUGHT PLACE, NEW DELHI – 110 001 (PAN: ADPPK1375C) (APPELLANT)	VS.	ACIT, CIRCLE 2(2)(1), Ghaziabad CGO Complex II, Ghaziabad (RESPONDENT)

Appellant by : Shri Akhilesh Kumar, Adv.

Respondent by : Shri Amit Katoch, Sr. DR.

Date of hearing : 13.11.2024

Date of pronouncement : 18.11.2024

**ORDER**

**PER SHAMIM YAHYA, AM :**

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(Appeal)/NFAC, Delhi dated 27.06.2024, relating to assessment year 2016-17 on the following grounds:-

1. Because the CIT (Appeals) NFAC has erred in law and feet in as much as the CIT (A) failed to take note of the fact that the Notice dt. 04.07.2017 u/s 143(2) of the Act issued by ITO Ward 2(2)(5) Ghaziabad is beyond his pecuniary jurisdiction in terms CBDT instruction No. 1/2011 [F.No. 187/12/2010- IT(A-I)] dated 31.01.2011, as the total income declared in the ITR was at Rs. 2,92,67,910/- and the correct jurisdiction lies with ACIT/DCIT in terms of aforesaid CBDT instructions and therefore the assessment order is illegal being beyond jurisdiction and thus liable to be quashed.

2. Because the CIT(A), NFAC, has grossly erred by passing the Impugned order u/s 250 of the Income Tax Act, 1961 upholding the assessment order of the Assessing Officer, rejecting the adjournment application filed by the Appellant, without granting sufficient opportunity of being heard, against the principles of natural justice and therefore the Impugned Order is bad in law and liable to be set aside.
3. Because the CIT (Appeals) NFAC has erred in law and fact by dismissing the appeal ex- parte, without adjudicating the grounds raised in the appeal and without appreciating the facts of the case and documentary evidences available on assessment record and therefore the Impugned Order is bad in law and liable to be set aside.
4. Because the Ld. CIT(A) NFAC failed to appreciate the fact that the Assessing Officer has grossly erred on disallowing the expenditure of Rs. 35,00,000/- on account of Stamp Duty paid and borne by the appellant duly evidenced by the registered Sale Deed, incurred wholly and exclusively in connection with the transfer in terms of section 48 of the Act.
5. Because the Ld. CIT(A) NFAC failed to appreciate the fact that the Assessing Officer has grossly erred on disallowing the expenditure of Rs. 10,00,000/- on account of Brokerage paid and borne by the appellant, incurred wholly and exclusively in connection with the transfer in terms of section 48 of the Act.
6. Because the Ld. CIT(A) NFAC failed to appreciate the fact that the Assessing Officer has grossly erred on disallowing the expenditure of Rs. 10,00,000/- on account of Brokerage paid and borne by the appellant, incurred wholly and exclusively in connection with the transfer in terms of section 48 of the Act.

2. In this case, AO made an addition of Rs. 1,85,00,000/- which comprises of disallowance of Rs. 35 lacs on account of stamp duty; disallowance of Rs. 10 lacs on account of brokerage expenses and disallowance of deduction of Rs. 1,14,00,000/- made u/s. 54 of the Act.

3. Against the above action of the AO, Ld. CIT(A) noted that appeal was posted for hearing on several occasions, however, assessee sought adjournments, hence, Ld. CIT(A) proceeded to dismiss the appeal for non-prosecution.

4. Against this order, assessee is in appeal before us.

5. We have heard both the parties and perused the records. Ld. Counsel for the assessee pleaded that there were genuine reasons for non-appearance before

the ld. CIT(A) and hence, he prayed that an opportunity may be given to the assessee before the Ld. CIT(A) to properly canvass his case, in the interest of justice. Ld. DR did not object the aforesaid proposition.

5.1 After considering the aforesaid factual matrix, we are of the considered view, that interest of justice will be served, if the issues in dispute are remitted back to the file of the Ld. CITA(A) with the directions to pass a speaking order on the merits of the case, after giving adequate opportunity of being heard to the assessee. We hold and direct accordingly.

6. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced on 18/11/2024.

Sd/-

(VIMAL KUMAR)  
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

SRBHATNAGAR

**Copy forwarded to:-**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar