

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.79/ALLD/2024
A.Y. 2018-19

Rajman, C/o CA Vaibhav Goel 75 Navyug Market 1 st Floor, Ghaziabad, U.P.	vs.	Income Tax Officer, Ward-3, Ambedkar Nagar
PAN:AVGPR9224E		
(Appellant)		(Respondent)

Assessee by:	Sh. Ashish Bansal, Advocate
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	04.09.2024
Date of pronouncement:	25.10.2024

ORDER

PER SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER:

This is an appeal against the order of the Id. CIT(A), NFAC under section 250 of the Income Tax Act, 1961 dated 12.04.2024, dismissing the appeal of the assessee in limine. The grounds of appeal preferred are as under:-

"1. That, on facts and circumstances of the case, the order passed by Ld CIT(A) is bad both in the eyes of law and on the facts of the case.

1.1. That, on facts and circumstances of the case. Ld CIT(A) erred in dismissing the appeal in limine for non-prosecution without going either into the merits of the case or discussing the various grounds of appeal filed by the appellant.

2. That, on facts and circumstances of the case, without prejudice to other grounds of appeal, the assessment order dated 15.04.2021 made u/s 143(3) instead of section 144 of the Income Tax Act, 1961 is not valid,

Without prejudice to grounds of appeal 1 & 2,

3. *That the agriculture land not being capital asset as per section 2(14) of the Act was wrongly subjected to tax on income Rs. 82,07,980.*

4. *That the impugned assessment order is invalid in as much as notice under section 142(1) was time barred.*

5. *That the impugned order is beyond the scope of issue investment in immovable property under e-Assessment Scheme, 2019.*

6. *That the Ld AO did wrong in not referring the matter to the Departmental Valuation Officer for valuation as required under the provisions of the Act.*

7. *That section 56(2)(x) of the Act was wrongly invoked rendering the impugned assessment order invalid.*

8. *That the reasonable opportunity of being heard was denied and the impugned order is against the principles of natural justice.*

9. *That the appellant craves leave to add, to alter or to amend grounds of appeal before the appeal is heard and disposed off."*

2. The facts of the case are that the case of the assessee was selected for limited scrutiny under the e-Assessment Scheme, 2019 on the issue of investment in immovable property, since, the assessee had purchased immovable property for a consideration value less than the market price/stamp value of the property. The Id. AO records that during the assessment proceedings, he gave the assessee multiple opportunities by issuing notices under section 142(1) and letters on six occasions. Finally, in response to the final notice, the assessee submitted the information that he had purchased three agricultural land properties in the Financial Year 2017-18 and he submitted that the purchase deeds for the same. Assessee further submitted that he had disclosed the same amount that had been paid to the party on arm's length basis, as per the registered valuer that was duly approved by the income tax department. The Id. AO noticed that there was a difference between the consideration value paid by the assessee and the stamp value of the properties to

the extent of Rs.82,07,980/-. The ld. AO records that notices were issued to the assessee for furnishing the registered valuer's report but these were not furnished. Therefore, the ld. AO made addition of Rs.82,07,980/- under section 56(2)(x) of the Act.

3. Aggrieved with the said addition, the assessee filed an appeal with the ld. CIT(A) on 15.05.2021. It was submitted in the statements of facts that the notice under section 143(2) issued on 28.09.2019, had never been served upon the assessee. It was further submitted that the assessee has purchased agricultural land and agricultural land was not a capital asset as the same was situated at a distance of 28 Kilometers from municipal limits and therefore was out of the purview of section 2(14) of the Income Tax Act. Hence, it was submitted that the provisions of section 56(2)(x) could not apply to the said property. It was submitted that the cost of the property was the same as disclosed in the purchase deed and the consideration was based on the average price of the properties in the same location and duly supported by the report of the registered valuer. However, the ld. AO had not accepted the arguments of the assessee and hence appeal had been filed. It was submitted that the impugned assessment order was invalid in law as the notice under section 142(1) was time barred. Further, the ld. AO was obliged to refer the matter to the District Valuation Officer for valuation, as required under section 50C(2) of the Act, but had erred in not doing so. It is also submitted that section 50(2)(x) had been wrongly invoked rendering the impugned assessment order invalid. The ld. CIT(A) records that he gave multiple opportunities to the assessee by way of issue of notices on 15.11.2022, 7.06.2023 and 12.03.2024 and 4.04.2024, but the assessee had not responded. Therefore, the ld. CIT(A) held that the assessee was not serious about pursuing his appeal and ,after observing that he had not received information or document so as to make a judgment on merits, he dismissed the appeal in limine.

4. The assessee is aggrieved at this summary dismissal of his appeal. Shri Ashish Bansal, Advocate (hereinafter referred to as the "ld. AR") appearing on behalf of the assessee submitted that the assessee had sworn an affidavit that he was only educated upto primary level and 85 years old. Furthermore, he had submitted an appeal to the Income Tax Commissioner on 15.05.2021, but because he was not well educated, he had entrusted the entire responsibility of prosecuting the appeal to his counsel, Shri Subhash Chandra Agarwal, who was a resident of Gomti Nagar, Lucknow and moreover, he was not very mobile due to his advance age. However, Shri Subhash Chandra Agarwal had suffered a heart attack and passed away on 3.02.2024. Therefore, the case could not be represented before the ld. CIT(A). It was submitted that the notices sent on the portal or the email ID, could not be accessed and once the appeal had been dismissed and information received with regard to the same, the appeal had been preferred against the same. The ld. AR submitted that due to the lack of education of the assessee and the fact of his counsel having expired midway through the appeal, the appeal could not be properly represented before the ld. CIT(A). It was further submitted that there were several legal issues involved in the said appeal, that the agricultural land was not a capital asset and therefore, could not be the subject matter of addition under section 56(2)(x). Furthermore, since the assessee had submitted his objections to the adoption of Stamp Duty Value, the ld. AO was obliged to refer the matter to the Departmental Valuation Officer for valuation under section 56C(2) of the Income Tax Act and finally the entire assessment was barred because of non-service of notice under section 143(2). The ld. CIT(A) had not decided any of these legal issues on its merits. It was, therefore, prayed that the matter may be restored to the file of the ld. CIT(A) on these issues.

5. On the other hand, Shri A.K. Singh, ld. Sr. DR (hereinafter referred to as the "ld. DR") submitted that in view of the fact that the counsel of the assessee had expired midway through the appeal proceedings, there was no objection to the

matter being restored to the file of the Id. CIT(A). However, he submitted that the assessee had adopted a non-compliant attitude during assessment also and therefore, directions should be issued to the assessee to make proper compliance before the Id. CIT(A), failing which his lack of compliance could lead to an adverse inference against him.

6. We have duly considered the facts and circumstances of the case. We find that the assessee was handicapped in representing his case before the Id. CIT(A) on account of the demise of his counsel, midway through the appeal proceedings. We also find that the assessee, in his grounds of appeal had raised several legal issues which could have been decided by the Id. CIT(A) with reference to the records, even without representation from the assessee. Therefore, in the interest of justice, we deem it fit to restore the matter to the file of the Id. CIT(A) for a decision on merits, on the grounds of appeal submitted by the assessee before him. Needless to say, the assessee is obliged to make full compliance before the Id. CIT(A), to enable him to effectively address the issues raised before him and failure to elaborate upon the legal and factual issues presented, could be viewed adversely by the Id. CIT(A). We, therefore, remand the matter back to the file of the Id. CIT(A) for a fresh decision on the merits of the case and in view of the same, the appeal of the assessee is deemed to be allowed for statistical purposes.

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

Order pronounced on 25.10.2024 at Allahabad U.P.

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

DATED: 25/10/2024

Sh

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

Copy forwarded to:

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

By order
Sr. P.S.