

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH (Virtual) JODHPUR**

**BEFORE DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER
AND DR. S. SEETHALAKSHMI, HON'BLE JUDICIAL MEMBER**

**ITA No. 299/Jodh/2024
(Assessment Year 2010-11)**

Mahendra Rathi, E-122, Kanta Khaturia Colony, Bikaner 334001. PAN No. ABFPR6416H	Vs.	ITO, Bikaner.
Assessee by	Shri Rajendra Jain, Advocate	
Revenue by	Shri Karni Dan, Addl. CIT- DR	
Date of Hearing	07.05.2025.	
Date of Pronouncement	28.05.2025.	

ORDER

DR. MITHA LAL MEENA, A.M.:

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [hereinafter referred to "the NFAC"] dated 21.10.2022 passed *ex parte* qua the assessee for non-prosecution in respect of Assessment Year 2010-11.

2. He has taken the following grounds:

"1. Under the facts and circumstances of the case, CIT(A) has erred in passing ex-parte non-speaking appeal order ignoring that the appellant has not been served upon notice for hearing of appeal. Due to non-linking of PAN — Aadhar, the appellant didn't receive notice properly which resulted into ex-parte appeal order.

2. Under the facts and circumstances of the CIT(A) has erred in confirming issuing of notice u/s. 148 of the Act by reopening the assessment proceeding without any concrete reason and correct facts.



CIT(A) didn't have any correct reason to believe that there was escapement of income which was not brought to tax.

3. *Under the facts and circumstances of the case CIT(A) has erred in confirming computation of short term capital gain Rs. 31,73,520/- on sale of Agriculture Land executed through Sale deed dt. 14.10.2009 ignoring the facts that sale consideration were not paid by the buyer hence the entire sale deed become illegal and non enforceable in law. CIT(A) also ignored that details of payments of sale consideration which had been narrated to have made through cheques were in fact never encashed and the appellant actually didn't receive sales consideration against sale deed of Agriculture property.*

4. *Under the facts and circumstances of the case CIT(A) has erred in confirming computation of short term capital gain on sale of Agriculture Land ignoring that these Land is not part of capital assets u/s.2(14)(iii) of the I.T. Act and accordingly capital gain tax liability is not at all attracted. Under the facts and circumstances of the case CIT(A) has erred in incorrectly computing interest u/s.234-A, 234-B and 234-C of the Act."*

2. There was a delay of 428 days in filing the appeal. The Ld. AR submitted that the appellant was under treatment of Angioplasty duly supported with an Affidavit certified by Central Notary, Govt. of India. The Ld. DR has no objection. Considering the bonafide reason, the delay in filing appeal is condoned and appeal admitted.

3. Having heard both the sides and perusal of material on record, we find that the Ld. NFAC has rejected the appeal ex parte qua the assessee summarily by a non-speaking appeal order without mentioning the factum of service of notices of hearing issued u/s 250 of the Act, up on the appellant. The Ld. AR has

contended that the appellant didn't receive notice which resulted into ex-parte appeal order without appreciating the facts on merits of the case and legal issue.

4. The Ld. AR in legal issue challenged the issue of validity of issue of notice u/s. 148 of the Act by reopening the assessment proceeding without any concrete reason and correct facts and that the CIT(A) didn't have any correct reason to believe that there was escapement of income which was not brought to tax. The Ld. AR contention as per ground of appeal that CIT(A) didn't have any correct reason to believe that there was escapement of income which was not brought to tax is perse vulnerable as the CIT (A) is not competent authority to have reason to believe because it the AO who record the reasons.

4.1 While adjudicating the validity of reasons recorded u/s 147 for issue of notice u/s 148 of the act, we need to see that it is prima facie belief of the AO and not the establishment of concealment of income. The Ld. AR contention that CIT (A) didn't have any correct reason to believe that there was escapement of income which was not brought to tax is factually incorrect. In fact, it is the Assessing Officer who had recorded correct reason to believe regarding escapement of Income Capital Gains Tax on sale of Land. The Case Law relied by the AR of the assessee that of Amritsar Bench in the case Lateef Ahmad Gujree Vs. ITO in I.T.A. No. 24/Asr/2024 Assessment Year: 2010-11 dated 04.06.2024 and other Benches are distinguishable on peculiar facts of the present case.

5. In is settled law that at the stage of issuance of notice under Section 148, the Assessing Officer is only required to form a prima facie view. The sufficiency and correctness of the material cannot be gone into at this stage. It is evident from the record that the reasons recorded that the AO has prima facie belief that income has escaped assessment and therefore, the legal issue of validity of notice u/s 148 on incorrect facts is liable to be rejected.

6. We find that Id. CIT(A) has rejected the appeal of the assessee by stating that appellant was not interested in prosecuting the appeal, as there was no response to the notices of hearing from the assessee. However, Ld. CIT(A) has not mentioned the facts regarding service of said notices issued u/s 250 on the of the act, to enable the assessee to present his submissions in defence of the claims made in the grounds of appeal.

7. We understand that assessee has good arguable case on merits and hence, he deserves to be given one more opportunity of being heard to present its appeal before the CIT(A). In view of the principles of natural justice, it would be appropriate to restore the matter back to the file of the Id. CIT(A) to adjudicate the appeal of the assessee afresh by addressing the grounds of appeal on merit of the case after granting adequate opportunity of being heard to the assessee and considering the written submissions and documentary evidences to be filed on record in the de novo appellate proceedings. In the case, the CIT(A)



is not satisfied with the reply of the assessee, and he intends to take any adverse view against the appellant-assessee, he shall issue a show cause notice before taking such view.

8. Accordingly, the impugned order is set aside and the matter is remanded back to the file of the Id. CIT(A)/NFAC to adjudicate the issue de novo on merits of the case, in accordance with law.

Order pronounced on.....28/05/2025 in the open Court.

Sd

(DR. S.SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 28/05/2025

Copies to :

- (1) The appellant.
- (2) The respondent.
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

Sd

(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

By Oder
Assistant Registrar,
Income Tax Appellate Tribunal,
Jodhpur Bench,
Jodhpur.