

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC-1”: NEW DELHI**

**BEFORE SHR BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA No. 6825/Del/2019
(Assessment Year: 2010-11)

Shri Naresh Chand, S/o. Late Shri Rohtash Tyagi, Village-Chhapraula, Pargana & Gehsil-Dadri, Gautam Budh Nagar, Uttar Pradesh – 201 009. PAN: AUEPN4259Q	Vs.	ITO, Ward-2 (3), Noida.
(Appellant)		(Respondent)

Assessee by :	N O N E;
Department by :	Shri Rajesh Kumar, Sr. DR;
Date of Hearing	03/02/2021
Date of pronouncement	03/02/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal has been filed by the assessee against the order of the Id. CIT (Appeals)-I, New Delhi, dated 31.12.2018 for Assessment Year 2010-11, wherein the appeal of the assessee was not admitted by the CIT (Appeals) for want of jurisdiction. Therefore, assessee is aggrieved and has raised very lengthy grounds of appeal, as under:-

“ The Grounds of appeal are enumerated hereunder, which are without prejudice to one-another

1. That on the facts and circumstances of case and in law. the Id. CIT(A) erred in not allowing the appeal on mere premise of alleged non-compliance of provisions of section 249(4)(a)/249(4)(b) of the Income Tax Act, which has no applicability to the case of the assessee and thereby the said purported premise of Id. CIT-A is absolutely arbitrary, unlawful, uncalled-for and legally untenable and consequently the impugned assessment and demand is liable to be quashed.
2. That the impugned notice under section 148 dated 30.03.2017 and reassessment framed in pursuance thereof is absolutely unlawful, void ab-initio, bad in law and have no legal force at all to sustain; because the very initiation of this case was founded and solely based upon AIR information and thereby the Id.

AO was not having any material to form necessary belief that any income escaped assessment in assessee's hand and therefore the very issue of impugned notices under section 148 and entire proceedings thereafter are without jurisdiction and are against the specific provisions of law and are null and void ab-initio and are liable to be quashed as per settled legal position.

3. The impugned proceedings and reassessment order so passed is untenable in law and is against the rudimentary principles of contemporary jurisprudence and law laid down by Hon'ble jurisdictional high court; as the same is passed without issuing any notice u/s 143(2), which fact is also fully evident from the body of the impugned order, which has no mentioning, nor even any whisper, regarding issue of such notice and thus the same is absolutely unlawful, bad in law', void ab-initio and is liable to be quashed.
4. On the facts and circumstances of the case and in law, the impugned capital gains computed on sale of land is not taxable as per the provisions of law; as the under reference land fell outside the ambit of definition of capital asset and thus alleged capital gains of Rs.27.02,000/- is absolutely arbitrary, unwarranted, unlawful, unjustified and untenable in law.
5. Without prejudice to all above grounds and on the facts and circumstances of the case and in law. the impugned additions of Rs.27,02.000/-, purportedly assessed as long term capital gains is absolutely arbitrary, unwarranted, unlawful; whereas the assessee has cogent documentary evidence to establish eligibility of deduction under section 54F of the income tax Act, 1961 and therefore no such gains is liable to be taxed and the impugned additions is liable to be deleted. On the facts and circumstances of the case and in law, the authorities below erred and was not justified in completing the assessment ex-parte, which being completed without giving any opportunity of being heard to the assessee is bad in law and is against the specific provisions of law as well as in violation of the principle of natural justice and thus is liable to quashed.
6. That the direction in the impugned order for levy of interest u/s 234A, 234B and 234C is made in most mechanical manner without any iota of any discussion of facts and circumstances warranting the same and such interest is liable to be deleted.
7. That all the above grounds are independent grounds, which are without prejudice to one another.
8. The Appellant reserves its right to add, amend, modify, supplement, delete, alter or withdraw any ground of appeal at any time during the course of appellate proceedings.

In the light of the above grounds, facts and circumstances of the case and in law, the Appellant hereby claims relief in this appeal that the impugned additions made by the Id. AO and confirmed by Id. CIT-A to the extent of Rs.27.02.000/- be kindly deleted by allowing the present appeal in full and oblige. “

2. The brief facts of the case shows that assessee an Individual was issued a notice under Section 148 of the Income Tax Act, 1961 (the Act) on 30.03.2017. It was based on the AIR information that assessee has sold immovable property for sale consideration of Rs.1,35,10,000/- on 24.09.2019. Verification letter was also

issued on 17.01.2017 to know that whether the assessee has declared capital gain or not. The assessee remained non-compliant before the Assessing Officer and, therefore, he computed the long term capital gain of Rs.27,02,000/- and passed order under Section 144 read with Section 147 of the Act on 1.12.2017. Aggrieved with the order of the ld. AO assessee preferred an appeal before the ld. CIT (Appeals)-I, Noida.

3. The ld. CIT (Appeals) in para No. 4 noted that when the notices were issued to the assessee at address given by the assessee in column No. 17 of Form No. 35 none attended. However, it was further stated that the envelope containing the notice was returned by the Postal Authorities that no such person was found. The ld. CIT (Appeals) noted that no such person could be located. He further noted in para No. 8 that Postal Authorities have also given a note that appellant has left the premises on which notices were issued. Thereafter he further stated that the assessee has also not paid admitted tax. Therefore, on 31st December, 2018 he held that the present appeal cannot be admitted and hence dismissed.
4. Assessee aggrieved with that order preferred this appeal.
5. None on behalf of the assessee remained present on the date of hearing. The ld. DR stated that due notice have been issued. However, the assessee did not remain present before the CIT (Appeals) and hence appeal of the assessee was dismissed.
6. We have carefully considered the contentions of the ld. DR and perused the orders of the lower authorities. In absence of the assessee the issue is decided on the merit of the case. A perusal of the order of the ld. Assessing Officer it is apparent that assessee has not filed any return of income and, therefore, there is no question of payment of any admitted tax. Further when the notices issued by the CIT (Appeals) on the address given by the assessee on form No. 35 when assessee was not found and there is a remark that he has left the premises, the CIT (Appeals) dismissed the appeal of the assessee. It is also an admitted fact that assessee is having the requisite Permanent Account Number of AUEPN4259Q. Therefore, in the PAN data base the address of the assessee is available. When the assessee has left the place, but has received the assessment orders as well as the appellate orders, we fail to understand that how the assessee did not receive the notices. In fact the assessee has received the assessment order, appellate order on the same address as well as has also filed the appeal before us also giving the same address, we find that the notices should have been issued to the assessee. Further in column No. 8 of Form No. 35 assessee has himself stated that there is no admitted tax

due, therefore, not admitting the appeal of the assessee and further not decided it on the merits of the case, the order of the CIT (Appeals) is unsustainable. In view of this we quash the order passed by the Id. CIT (Appeals) and set aside the whole issue to the file of the Id. CIT (Appeals) to grant an opportunity of hearing to the assessee by proper service of the notice and decide the issue on merits of the case. Accordingly, appeal of the assessee is allowed, with the above directions.

Order pronounced in the open court on 03/02/2021.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 03/02/2021.

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	3.02.2021
Date on which the typed draft is placed before the dictating member	3.02.2021
Date on which the typed draft is placed before the other member	3.02.2021
Date on which the approved draft comes to the Sr. PS/ PS	3.02.2021
Date on which the fair order is placed before the dictating member for pronouncement	3.02.2021
Date on which the fair order comes back to the Sr. PS/ PS	3.02.2021
Date on which the final order is uploaded on the website of ITAT	3.02.2021
date on which the file goes to the Bench Clerk	3.02.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	