

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC-1" NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND MS. MADHUMITA ROY, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.1318/Del/2018  
निर्धारणवर्ष/Assessment Year:2009-10

Harendra Singh 4/A1, Shradha Puri, Phase-1, Khirwa Road, Kanker Khera, Meerut, Uttar Pradesh.	बनाम Vs.	ITO Ward 1(3) Meerut Ghaziabad.
PAN No. AZQPS0314N		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Sh. Sanjay Malik, Adv. Sh. Sankalp Malik, Adv.
राजस्वकीओरसे /Revenue by	Sh. Ved Prakash Mishra, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	26.11.2020
उद्घोषणाकीतारीख/Pronouncement on	27.11.2020

आदेश /O R D E R

PER N.K. BILLAIYA, A.M.

1. This appeal by the assessee is preferred against the order of the CIT(A)-2, Noida dated 14.12.2017 pertaining to AY 2009-10. The grievance of the assessee reads as under:

- 1) *"The assessment order is illegal, void & without jurisdiction of the AO passing the order. It is prayed that the assessment may please be annulled.*
  - a) *Notice was issued on the wrong address of the assessee and was not received by him.*
  - b) *The assessee has been assessed at Meerut, hence assessment made by another AO at Ghaziabad is illegal.*

- 2) *Proceedings u/s 148 by the AO is illegal and without jurisdiction and it is prayed that the assessment may please be annulled.*
- 3) *On the facts of the case addition of Rs. 36,24,000/- made by the AO is illegal and without jurisdiction and the same may please be deleted. Assessee was 1/6<sup>th</sup> owner in the property sold. Assessing him of the total value of the property is wrong, illegal and void. CIT(A) did not applied the facts of the case and passed an order which is without merits.*
- 4) *The Ld. CIT(A) has not judicially applied the facts of the case and decided the appeal without considering the facts of the case, non-consideration of the documentary evidence was against natural justice. It is prayed that addition of Rs. 14,74,000/- proposed by CIT(A) may please be deleted.”*

2. Briefly stated the facts of the case are that the appellant is a resident of Meerut and has been filing his return from the same address before the ITO, Ward 1(3), Meerut, Ghaziabad. On the basis of an AIR information ITO, Ward 1(3), Ghaziabad initiated reassessment proceedings. The information suggested that assessee has purchased a property worth Rs. 36.24 lakhs. All the notices and intimations were issued to the address at Village Joya, Modi Nagar which was mentioned in the transfer deed of the property. Since all the notices were served at this address, where the assessee was not residing he could not respond to the notices and the assessment was framed *ex parte* u/s 144/147 of the Act.

3. Assessee preferred an appeal before the CIT(A) and the CIT(A) was convinced that no such property was purchased by the assessee during the year under consideration and, accordingly, deleted the addition made by the AO. However, the FAA was of the opinion that the assessee has in fact sold some property in the year under consideration and, accordingly, issued notice of enhancement.

4. On the basis of the sale deed the CIT(A) was of the opinion that the actual sale consideration was Rs. 28 lakhs; whereas the valuation as per stamp duty value was shown at Rs. 36.24 lakhs. The CIT(A) was of the firm belief that the assessee was liable to pay capital gains tax and, accordingly, made the addition of Rs. 14.74 lakhs thereby deleting the addition made by the AO amounting to Rs. 36.24 lakhs.

5. Before us, the Counsel for the assessee vehemently stated that the entire assessment was reopened on the basis of an AIR information which stated that the assessee has purchased a property, it is the say of the Counsel that since the reopening was to verify the purchase transaction and since the said transaction never took place and, therefore, the addition made by the AO was deleted by the CIT(A). Therefore, CIT(A) had no power to enhance the assessment on an altogether different issue which was never there in the reasons recorded for reopening the assessment.

6. Per contra, the DR strongly supported the findings of the CIT(A). It is the say of the DR that the powers of the CIT(A) are coterminous to that of the AO and hence, the enhancement is lawful.

7. We have given a thoughtful consideration to the orders of the authorities below. We have also carefully gone through the relevant documentary evidences brought to our notice. A perusal of exhibit 84 to 92 shows that the assessee has been filing his return of income in Meerut. We also find that the address in the PAN card is also that of Meerut. We fail to understand how the AO of Ghaziabad assumed jurisdiction to reopen the assessment.

8. Assuming, yet not accepting, that the notice of reassessment issued was lawful yet the information was in respect of purchase of a property, whereas no such property was ever purchased by the assessee.

9. On these facts the CIT(A) deleted the addition made by the AO. However, the CIT(A) exceeded his jurisdiction in making the enhancement on an issue which was never there in the reasons recorded for reopening the assessment.

10. We are of the considered view that the enhancement done by the CIT(A) is bad in law and the reassessment notice issued by the AO, Ghaziabad is also bad in law. We, accordingly, set aside the assessment and quash the same. Since the foundation has been removed the order of the first appellate authority becomes *non est*.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 27/11/2020.

Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER

Sd/-  
(N.K. BILLAIYA)  
ACCOUNTANT MEMBER

Dated: 27<sup>th</sup> November, 2020

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard  
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi