

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 2314/Del/2023  
(Assessment Year: 2011-12)**

Chaudhary Stone Crusher, C/o. Sh. C. S. Anand, Advocate, 104, Pankaj Tower, 10, L. S. C. Savita Vihar, Delhi-92 (Appellant)	Vs. ITO, Ward-3(1), Saharanpur,  (Respondent)
--	---

**PAN: AAGFC5621D**

Assessee by :	Shri C. S. Anand, Adv
Revenue by :	Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing	14/02/2024
Date of pronouncement	24/04/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.2314/Del/2023 for AY 2011-12, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/NFAC/S/250/2023-24/1053738230(1) dated 15.06.2023 against the order of assessment passed u/s 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 24.12.2018 by the Assessing Officer, ITO, Ward-3(1), Saharanpur (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal before us:-

*"1. That the initiation of proceedings u/s 147, merely on the basis of a vague/unsubstantiated information forwarded by another AO, even without making prima-facie verification in a proper manner, is illegal.*

*2. That the assumption of jurisdiction u/s 147 is illegal.*

3. That the re-assessment proceedings are liable to be quashed because the jurisdictional notice u/s 148 stated to have been dispatched under Speed Post Cover bearing no.RU033181230IN was not served on the appellant.

Note:

The envelope containing the said notice u/s 148 was returned unserved by the Postal Authorities with the remark:- "Post रायेपुर के गांव महमूदपुर नगली में इस नाम का क्रेशर था परन्तु अब नहीं है। अते सैंडर को वापसी 12-4-18".

4. That the re-assessment order dt.24.12.2018 passed u/s 144/147 is liable to be annulled because the statutory notice was not served on the appellant.

5. That on the peculiar facts of the case and in law, no addition under the head Short Term Capital Gains could have been made in the hands of the appellant because the appellant had neither made investment in purchase of the assets nor received monies upon selling those assets.

6. That the addition of Rs.91,74,000/- is liable to be deleted, more particularly because prior to making addition, show cause notice was not issued and served on the appellant."

3. The assessee is a partnership firm and had not filed its return of income for AY 2011-12. The assessee firm was formed on 26.11.2009 with five partners. The firm was formed for the purpose of manufacturing and trading of stone grits, corsand, etc. The firm never got permission/ consent to operate from the UP Pollution Control Board and therefore operations of the firm never commenced. Serious disputes arose between the partners and the partners sold their individual properties which was purchased by them in earlier years. As per the sale deed, 7212 sq mtr of land owned by the partners in their individual capacity was sold as land with machinery of stone crusher and building situated at Mahmoodpur Nagli, Faizabad, District Saharanpur. The sale deed contained the market value of the land at ₹54,09,000/-, the value of stone crusher machinery at Rs. 25 lakhs, value of duck, which is part of stone crusher unit at ₹4,72,500/-, the value of building of ₹7,20,790/-, value of tin shed at ₹70,245/-. Thus, the total market value came to ₹91,74,000/-, which clearly comprises of land and building of ₹61,29,790/- and rest is attributed towards machinery, tinshed and duck. **The Id AO was of the opinion that that the firm had sold the land and building and accordingly**

**issued notice u/s 148 of the Act on 29.03.2018 by speed post.** The said notice was issued to the assessee firm by speed post to the address at village Mahmoodpur Nagali, Faizabad, District Saharanpur which was returned undelivered. The reasons recorded by the AO for reassessment are as under:-

**"Reasons for reopening of the assessment in case of M/s Chaudhary Stone Crusher, for A.Y. 2011-12 u/s 147 of the I.T. Act. 1961**

**15.03.2018**

*1. Brief details of the Assessee -The assessee Sh. M/s Chaudhary Stone Crusher, Vill Mahmoodpur Nagli Must PO. Rajpur Paragana, Faizabad, Saharanpur bearing PAN- Non PAN has not filed his return of Income for A.Y. 2011-12.*

***2. Brief details of Information collected/receive by the AO:** The Information regarding sale of removable property during F.Y. 2010-11 has been received from Income Tax Officer Ward-1(2), Meerut, on 19.02.2018 that M/s Chaudhary Stone Crusher Vill. Mahmoodpur Nagli Must PO. Rajpur Paragana, Faizabad had sold immovable property during F.Y. 2010-11 of Rs. 60,00,000/put as per section 50C the value was of Rs.91,74,000/-.*

***3. Analysis of Information collected/received:** To verify the transaction, a query letter dated 06.03.2018 for dated 14.03.2018 has been issued and served upon the assessee by registered post but no reply has been received.*

***4. Enquiries made by the AO as sequel to information collected/received:** As the assessee has no Permanent Account No. and no details regarding filing of income Tax Return, a PAN query has been made through ITD Application through General Query criteria but no PAN has been traced out.*

***5. Finding of the AO:** From the information in possession of the department, it is noticed that the assessee has not filed the return of income for the said assessment year and the deposit of Rs.91,74,000/- in saving bank A/c remain not only unexplained but also unexamined in absence of any documentary evidence.*

***6. Basis of forming reason and details of escapement of Income:-** It is apparent that assessee has not explained the cash deposit despite several opportunities and the unexplained cash deposit of Rs.91,74,000/- is his undisclosed income which has escaped assessment for A.Y. 2011-12.*

*Hence, considering the above facts prima facie, I have reason to believe that income of Rs.91,74,000/- has escaped assessment for A.Y. 2011-12. Accordingly, proposal u/s 151(1) is being submitted to the Pr. Commissioner of Income Tax, Muzaffarnagar for kind perusal and approval.*

*Issue notice u/s 148 of the I.T. Act, 1961.”*

4. The reassessment was completed by the AO u/s 144/ 147 of the Act on 24.12.2018 bringing the sale consideration of land and building and machinery at ₹91,74,000/- as income of the assessee and determining the short-term capital gains thereon. In fact, the Id AO had issued show cause notice dated 04.12.2018 to this effect. In response to the said show cause notice, the assessee filed a reply on 10.12.2018 stating that the concerned land does not belong to the assessee firm, but the same belonged to individuals who are partners of the firm. The Id AO rejected the said explanation for want of documentary evidences and proceeded to treat the sale consideration of land and building and machinery at ₹91,74,000/- as short-term capital gain in the hands of the assessee firm.

5. Before the Id CIT(A), the assessee furnished documents such as sale deed of land, bank account of individual partners showing receipt of sale consideration in their hands. These documents were filed as additional evidences before the Id CIT(A) by the assessee. The Id CIT(A) observed that though the assessee has filed additional evidence as stated above, no petition has been filed in terms of Rule 46A(1) of the Income Tax Rules and accordingly Id CIT(A) proceeded not to admit these additional evidence and upheld the action of the Id AO ultimately.

6. From the perusal of the reasons recorded, we find that the Id AO had apparently proceeded on the premise that it is the assessee firm which had sold the land. It is not in dispute that assessee's case is non-PAN case and the assessee had not filed its return of income for AY 2011-12, even in response to notice issued u/s 148 of the Act. It is not in dispute that the notice u/s 148 of the Act has been issued by speed post in the address of the property which has already been sold. Hence the notice u/s 148 of the Act could not be served at all on the assessee. Though the Id AO had stated that the said notice was duly served on the assessee, the same is factually incorrect. In view of the fact that the address mentioned in the notice is the very same property address which had already been sold even according to the Id AO. **But the crucial fact**

**remain is that the land never belonged to the firm and it was owned and belonged to the partners.** In fact, the notice issued u/s 148 of the Act has been returned unserved with the postal remarks as under:-

*"Post रायेपुर के गांव महमूदपुर नगली में इस नाम का क्रेशर था परन्तु अब नहीं है। अते सैंडर को वापसी 12-4-18".*

7. The remark very clearly shows that the assessee firm existed in the said address and was merely using the property owned by the partners as the address of the assessee firm and that since the properties were sold by the partners prior to the issuance of notice u/s 148 of the Act, the assessee firm was not existent in that address and the notice u/s 148 of the Act had to be returned undelivered by the postal authorities. The sale deeds were indeed executed only by few individuals who are partners in the firm. This fact was duly brought on record by the assessee before the Id AO himself vide reply dated 10.12.2018 in response to show cause notice dated 04.12.2018, which have been completely ignored by the Id AO. In fact, from the perusal of the order of the Id CIT(A) in pages 7 to 9 , the details of name of the persons who owned the property, together with the area owned by him, date of purchase of the property by that individual, value of purchase of property by that individual and the details of sale made by those individuals to third-party were duly tabulated by the Id CIT(A). All these facts very clearly goes to prove that the property was never owned by the firm and that it was owned only by the partners. It is also not the case of the revenue that the subject mentioned property was brought as capital contribution by the partners in the assessee firm in terms of section 45(3) of the Act. It is also pertinent to note that the said property along with stone crusher machines were sold at ₹91,74,000/-, and the said sums were credited in the bank accounts of the concerned individuals. None of the credits were made in the bank account of the assessee firm. Hence, the entire facts recorded by the AO and the reasons recorded for reopening the assessment and the assessment order are factually incorrect. Accordingly, it could be

safely concluded that the reopening has been made on incorrect assumption of facts. When these facts were submitted with documentary evidences before the Id. CIT(A) in the form of additional evidences, the Id CIT(A) had summarily dismissed the same on filmy grounds without ascertaining the preliminary facts that are relevant for adjudication of the entire appeal before him. Since, the reopening has been made on incorrect assumption of facts by the Id. AO, we have no hesitation in quashing the entire re-assessment proceedings. Accordingly grounds raised by the assessee are allowed.

8. In the result of the assessee is allowed.

Order pronounced in the open court on 24/04/2024.

-Sd/-

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

-Sd/-

**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 24/04/2024

A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi