

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.2577/Del./2018
Assessment Year 2006-2007

Shri Ram Kishan Gupta, S/o. Shri Kudan Lal Gupta, VPO Guldhera, Teh. Pehowa, Dist. Kurukshetra, Haryana.PAN AAUPG9069P	vs.	The Income Tax Officer, Ward-1, Kurukshetra.
(Appellant)		(Respondent)

For Assessee :	Shri Sunil Mathur, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	29.04.2019
Date of Pronouncement :	01.05.2019

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Karnal, Dated 06.02.2018, for the A.Y. 2006-2007, on the following grounds :

1. *"That the Worthy Commissioner of Income Tax (Appeals) has erred in confirming the income*

assessed by ITO - Kurukshetra at Rs.9,86,230/- as against Rs.86,235/- declared by the assessee.

- 2. That the Worthy Commissioner of Income Tax (Appeals) has erred in confirming the addition of an amount of Rs.9,00,000/- on account of deposits with M/s Sainsons Paper Industries Ltd. made by the Assessing Officer.*
- 3. That the Worthy Commissioner of Income Tax (Appeals) has erred in law and facts in enhancement of assessed income by further 10 lakhs without going through the facts & circumstances and submissions made by the appellant.*
- 4. In the alternate and without prejudice to the above, the Ld. CIT(A) has erred in making addition of Rs.900000/- (Out of fresh addition of Rs.1800000/-) which was already made by the Ld. Assessing officer in his original assessment order.*

2. Briefly the facts of the case are that the Ld. CIT(A), Karnal passed the Order dated 30.07.2012 for the A.Y. 2006-2007 whereby the income assessed by the A.O.

was enhanced. The assessee preferred an appeal before the ITAT, Delhi F-Bench in ITA.No.5355/Del./2012 which was decided vide Order dated 19.12.2014. The Tribunal set aside the Order of the Ld. CIT(A) dated 30.07.2012 for the assessment year under appeal and restored the matter back to the file of Ld. CIT(A) to decide the appeal afresh as per Law. The Ld. CIT(A), accordingly, taken-up the appeal afresh. The Ld. CIT(A) reproduced the Order dated 30.07.2012 in the impugned order and noted that no additional evidences have been filed by assessee before him to rebut the above findings of the Ld. CIT(A). The Ld. CIT(A) accordingly agree with the findings of the Ld. CIT(A) above with enhancement and dismissed the appeal of assessee.

3. After considering the rival submissions, I am of the view that the matter requires reconsideration at the level of the Ld. CIT(A). Admittedly, the Ld. CIT(A) earlier decided the appeal of assessee vide Order dated 30.07.2012 whereby addition was made to the income of assessee. The said order was subject matter of appeal before ITAT and the Tribunal vide Order dated 19.12.2014 set aside the Order of the Ld.

CIT(A) dated 30.07.2012 (supra) and restored the appeal of assessee to the file of Ld. CIT(A) for deciding the appeal afresh as per Law. The Ld. CIT(A) was, therefore, required to decide the appeal of assessee afresh, considering the facts of the case, evidence on record and contentions of assessee. However, the Ld. CIT(A) adopted a strange procedure whereby he has reproduced the earlier Order dated 30.07.2012 in the impugned order and agreed with the findings in the same and dismissed the appeal of assessee. The Ld. CIT(A) forgot to note that his earlier Order dated 30.07.2012 have already been set aside by the ITAT and matter have been restored to him for passing the order afresh. Therefore, such Order dated 30.07.2012 would not be any Order in the eye of Law. Its reasoning could never be reproduced in the impugned order. Therefore, there is no question of concurring with the Order passed by the Ld. CIT(A) vide Order dated 30.07.2012 enhancing the income of assessee. It appears that Ld. CIT(A) failed to record finding of fact in the order afresh as per the directions of the Tribunal. The Order of the Ld. CIT(A) thus, cannot be

sustained in law. I, accordingly, set aside the impugned order of the Ld. CIT(A) dated 06.02.2018 and restore the matter in issue to his file with a direction to decide the appeal of assessee afresh as per Law, following the Order of the Tribunal dated 19.12.2014. The Ld. CIT(A) shall decide the appeal of assessee, by giving reasonable, sufficient opportunity of being heard to the assessee. Appeal of Assessee is allowed for statistical purposes.

4. In the result, Appeal of Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st May, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.