

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 826/CHD/2019

निर्धारण वर्ष / Assessment Year : 2010-11

M/s RMI Cycles Private Ltd., C/o V. Gupta & Associates, CAs, D-14, Calibre Market, Rajpura, Punjab	Vs. बनाम	The ACIT, Circle, Mandi Gobindgarh
स्थायी लेखा सं./PAN NO: AAACR8288G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : None

राजस्व की ओर से/ Revenue by : Shri G.S. Phani Kishore, CIT DR

सुनवाई की तारीख/Date of Hearing : 04.12.2019

उद्घोषणा की तारीख/Date of Pronouncement : 20.01.2020

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 28.02.2019 of the Commissioner of Income Tax (Appeals)-Patiala [hereinafter referred to as CIT(A)].

2. The assessee in this appeal has taken following grounds of appeal:-

1. That the order of the Ld. CIT(A) is bad in law and facts of the case.

2. The Ld. CIT(A) has, without appreciating the facts, submissions and evidence placed on record, erred in sustaining the addition by computing the income of the assessee in accordance with the provisions of section 50B of the Income Tax Act, 1961 on sale of movable and immovable assets of the assessee.

No one has come present on behalf of the assessee despite notice, hence, we proceed to decide the appeal after hearing the Ld. DR.

3. A perusal of the impugned order of the CIT(A) reveals that the same is same is a non-speaking order. In this case, the original assessment was framed u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act') on 28.12.2012 at the loss of Rs. 15,91,97,525/-. Thereafter, the Ld. CIT, Patiala exercising his revision jurisdiction u/s 263 of the I.T. Act vide order dated 27.3.2015 set aside the assessment order and restored the matter to the Assessing Officer with the direction to compute the income of the assessee on sale of movable and immovable assets in accordance with the provision of section 50B of the Act after affording reasonable opportunity to the assessee. The Ld. Assessing Officer as per the directions of the CIT, Patiala completed the assessment afresh at a net business loss of Rs. 1,62,69,923/- and long term capital loss of Rs. 1,03,29,623/- treating the transaction as slump sale as per the provisions of section 50B of the Act.

5. Aggrieved by the order of the Assessing Officer, the assessee preferred appeal before us.

6. Details submissions were made before the Ld. CIT(A) by the assessee. However, Ld. CIT(A) without considering the submissions of the assessee dismissed the appeal of the assessee observing as under:-

“The Ld. CIT Patiala has vide order u/s 263 referred supra given a clearing finding after giving the appellant an opportunity to be heard in Para 6 and 7 of the order that the transaction is clearly covered u/s 50B of the Act. This office cannot sit on the judgement on the order of the co-ordinate authority i.e. CIT, Patiala. The appeal is directly against the treating transaction the slump sale. In view of the above ground of appeal of the appellant is dismissed. It is ordered accordingly.

7. In our view, the Ld. CIT(A) has failed to exercise the appellate jurisdiction in this case which he was supposed to exercise. There is no question of sitting in appeal by the CIT(A) over the order of the Commissioner of Income Tax passed u/s 263 of the I.T. Act. The Ld. CIT vide his order passed u/s 263 of the Act had remanded the matter to the Assessing Officer to pass the order afresh after giving an opportunity of hearing to the assessee. Under the circumstances, the issue had not concluded by the Ld. Commissioner, rather, the matter was remanded to the Assessing Officer to consider the matter afresh and also consider the submissions of the assessee relating to the transaction in question as to why the same be not treated as slump sale. The assessee made submissions before the Assessing Officer which were not accepted by the Assessing Officer, against which the assessee preferred appeal

before Ld. CIT (A) and made detailed submissions as have been reproduced in the impugned order of the CIT(A). However, Ld. CIT(A) has neither considered nor discussed any of the submissions made by the assessee before him. The Ld. CIT(A) has dismissed the appeal of the assessee holding that Ld. CIT in order passed u/s 263 has already considered the issue. As discussed above, the Ld. CIT(A), in fact, has failed to exercise his appellate jurisdiction and to decide the appeal on merits after considering the submissions of the assessee.

8. In view of this, the impugned order of the CIT(A) is set aside. The matter is again restored to the file of the CIT(A) for decision afresh in accordance with law. Needless to say that the Ld. CIT(A) will give due opportunity to the assessee to present its case and thereafter to pass a speaking order duly considering the submissions, if any, made by the assessee.

In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 20.01.2020

Sd/-

Sd/-

(एन. के. सैनी / N.K. SAINI)
उपाध्यक्ष /Vice President
Dated : 20.01.2020
"आर.के."

(संजय गर्ग / SANJAY GARG)
न्यायिकसदस्य/ Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar