

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.559/Asr/2018  
Assessment Year: 2015-16**

M/s Dada Motor Garage, Opp. BSF Chowk, G.T. Road, Near BSF Complex, Jalandhar- Punjab. [PAN: AAAFD5509R] <b>(Appellant)</b>	<b>Vs.</b>	Assistant Commissioner of Income Tax, Circle-3, Jalandhar-Punjab.  <b>(Respondent)</b>
--	------------	--

<b>Appellant by</b>	<b>None.</b>
<b>Respondent by</b>	<b>Sh. Hitendra Bhauraoji Ninawe, CIT. DR</b>

<b>Date of Hearing</b>	<b>07.12.2022</b>
<b>Date of Pronouncement</b>	<b>20.12.2022</b>

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the assessee is directed against the order of the Id.  
Commissioner of Income Tax (Appeals)-2,Jalandhar, [in brevity the 'CIT (A)']

bearing appeal No.2/10684/17-18/CIT(A)/Jal, date of order 04.10.2018, order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2015-16. The impugned order was emanated from the order of the Id. Assistant Commissioner of Income Tax, Circle-3, Jalandhar, (in brevity the AO) order passed u/s 143(3) r.w.s 147 of the Act date of order 29.12.2017. The assessee took the following additional grounds which read as under:

*“1. That having regard to the facts and circumstances of the case, Hon’ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order u/s 143(3) r.w.s. 148 of the Act and that too without complying with the mandatory requirements and conditions u/s 151 as envisaged under the Income Tax Act, 1961.*

*2. That having regard to the facts and circumstances of the case, Hon’ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order u/s 143(3) r.w.s. 148 of the Act without considering the fact that objections to reasons recorded has not been disposed by separate order, which is a clear violation of*

*the law laid down by Hon'ble Apex Court in the case of OKN Driveshaft 259 ITR19.*

*Since the above ground does not require fresh facts to be investigated and goes to the root of the matter, it is prayed that it may please be admitted in view of the Hon'ble Supreme Court decision in the case of NTPC Limited 229 ITR 383.”*

2. Brief fact of the case is that the assessee is a partnership firm. After the settlement of the family separation, the revenue had received information from different sources and reopening was made u/s 148. During the assessment, the Id. AO made addition in the head of long term capital gain, amount of Rs.6,45,82,114/- with the total income of the assessee. The capital gain was calculated on the fixed asset on the basis of report received from the DVO. Aggrieved assessee filed an appeal before the Id. CIT(A) by challenging both the legal and factual grounds. The Id. CIT(A) upheld the order of the Id.AO. Being aggrieved assessee filed an appeal before us.

3. When the appeal was called for hearing, no one appeared on behalf of assessee to represent his case. There is no application for seeking adjournment

either. On perusal of record, we find that the hearing is scheduled on 07/12/2022& the assessee had filed the written submissions in its favour. Previously the dates were fixed number of times. In view of the above and considering the nature of dispute, we proceed to dispose the appeal *ex-parte qua* the assessee after hearing the learned DR and on the basis of material available on the record.

3.1 During appeal proceeding the assessee took the following grounds before the Id. CIT(A) by challenging the order of the Id. AO which are reproduced as below in page no.2 of the CIT(A) order:

*“2. The grounds of appeal taken by the appellant as per appeal memo are as under:-*

*1. That the order of the AO is against Jaw, facts and circumstances of the present case.*

*2. That the addition of Rs. 6,45,82,114 as long term capital gain has wrongly been made.*

*3. That the valuation of property is against law, facts and material on record further the reference to DVO in respect of other asset is absolutely incorrect.*

4. *That the appellant request for the deletion of the impugned addition by accepting the returned loss.*
5. *That the interest u/s 234 has wrongly been charged.*
6. *That the penalty u/s 271(1)(c) has wrongly been initiated.*
7. *That return was filed on 30.09.2016 and issue of notice u/s 148 on 13.12.2016 is absolutely incorrect.*
8. *That the appellant craves leave to add or amend, alter, substitute, waive, press, withdraw any ground of appeal during the currency of the present appellate proceedings.”*

4. We have heard the rival submission and relied on the documents available in the record and orders of both the revenue authorities. After receiving the recorded reason, the assessee has challenged the reopening and jurisdiction before the Id. AO as per the direction of the **Hon’ble Supreme Court in the case of GKN**

**Driveshaft 259 ITR 19.**The issue was duly mentioned in the assessment order in page no. 6 para 5.3 which is reproduced as below:

*“5.3 The assessee vide reply dated 13.12.2017 raised an objection against the reopening of the case u/s 147 of the I.T. Act, 1961. However, from the beginning of the assessment proceedings, the assessee has never raised any objection.”*

4.1 The ld. CIT DR only relied on the order of the revenue authorities and was not able to produce any different view against the additional ground of the assessee.

4.2 After a thoughtful consideration, we are in opinion that the assessing authority had not complied the rebuttal of the objection to assessee related to proceeding u/s 148 as guided by the Hon’ble Apex Court. But the same issue was not agitated by the assessee before the ld.CIT(A) in grounds of appeal. But the assessee is eligible to claim the additional ground as per the order of **Hon’ble Supreme Court in the case of NTPC Ltd. 229 ITR 383.** We accept the additional ground of the assessee. As all the additional grounds are newly framed before the ITAT. None was agitated before the adjudicating authority or was never agitated

before the lower authority. Considering the gravity of the legal grounds, we set aside the matter for **de novo** adjudication before the Id. CIT(A). Needless to say, the assessee should get reasonable opportunity of hearing for substantiate its claim before the Authority.

5. As we have remanded back the issue to CIT(A) de novo, the issues alleged by assessee on merit is left open for academic purposes.

6. In the result, the appeal of the assessee bearing **ITA No. 559/Asr/2018** is allowed for statistical purpose.

**Order pronounced in the open court on 20.12.2022**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order