

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 5477/Del/2019
Asstt. Year: 2008-09

Suraj Pulses Pvt. Ltd., 4062-630, Naya Bazar, Delhi - 110 006 PAN AAKCS4913P	Vs.	ITO, Ward-24(4) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Gurjeet Singh, CA
Department by :	Shri Gurpreet Shah Singh, Sr. DR
Date of Hearing	12.01.2023
Date of pronouncement	18.01.2023

ORDER

PER ASTHA CHANDRA, JM

1. The appeal by the assessee arises out of the order dated 11.3.2019 of the Ld. Commissioner of Income Tax Appeals-8, New Delhi ("**CIT(A)**") pertaining to assessment year ("**AY**") 2008-09.

2. The assessee has taken the following grounds:

- "1. Because the action is under challenge on facts & law since the findings recorded qua appeal dismissal is in violation to the principles of natural & substantial justice for a decision in accordance with law.*
- 2. Because the action is under challenge on facts & law for passing ex-parte order whereas counsel appeared & filed application for additional ground and sought time to file the submissions which has been denied.*
- 3. Because the action for initiation, continuation and conclusion of reassessment proceedings is being challenged on facts and law.*

4. *Because the continuation and conclusion of reassessment proceedings is being challenged on facts and law while there being erroneous disposal of preliminary objection raised pursuant to judgment of GKN Driveshafts 259 ITR19 SC.*
 5. *Because the action for initiation of re-assessment proceedings is unreasonable since while recording reasons, there is non-application of mind much less independent application of mind and merely relying upon investigation report by AO, further reasons recorded are vague, lacking tangible material/reasonable cause and justification.*
 6. *Because the action is being challenged on facts and law for making addition of Rs. 90,00,000/- on account of share capital/premium received.*
 7. *Because the action is being challenged since the addition of Rs 90,00,000/- has been made without having provided the cross examination of the person on whose statement or information the proceedings u/ s 147 were initiated & even without confronting the entire adverse material which was used against the assessee & that too by recording incorrect facts & findings.*
 8. *Because the action is being challenged since the addition of Rs 90,00,000/- has been made without making proper investigation from other parties as directed by the Pr. Commissioner in order u/s 263 whereby assessee has discharged the onus by providing relevant documents.*
 9. *Because the action for addition u/s 68 amounting Rs 90,00,000/- is being challenged on facts and law while all parameters for the provision of law required by assessee fulfilled as revealed in findings from acquiescence by silence.*
 10. *Because the action is being challenged since the addition of Rs 90,00,000/- has been made totally against the settled positions of law enunciated by the Apex Court in the case of Commissioner of Income Tax vs Lovely Export P. Ltd. (216 CTR195 (SC)).*
 11. *Because the action is being challenged on facts and law for making addition on account of commission paid amounting Rs 1,62,000/-.”*
3. Briefly stated the assessee company filed its return for AY 2008-09 on 4.8.2008 declaring total income of Rs. 3,55,310/-. The case was taken up for scrutiny under section 148 of the Income Tax Act, 1961 (**the “Act”**) and

notice under section 148 of the Act was issued to the assessee on 25.3.2014. In reply to the said notice, the assessee filed letter requesting the Ld. Assessing Officer (“AO”) to treat the return already filed as return filed in response to notice under section 148 of the Act.

4. The Ld. AO passed re-assessment order under section 148 r.w.s. 143(3) of the Act on 27.01.2015 accepting the return income of Rs. 3,55,310/-. The Ld. Pr. CIT set aside this re-assessment order under section 263 of the Act and directed the Ld. AO to pass the order afresh as per law. The Ld. AO completed the fresh assessment under section 263 r.w.s. 147 /143(3) of the Act on 6.12.2017 determining the assessed income at Rs. 95,17,310/- including therein addition of Rs. 90,00,000/- under section 68 of the Act and Rs. 1,62,000/- on account of unexplained investment against which the assessee filed appeal before the Ld. CIT(A) who confirmed the above additions.

5. The assessee, being aggrieved is before the Tribunal and all the grounds of appeal relate thereto.

6. The Ld. AR submitted that against the order under section 263 of the Act passed by the Ld. Pr. CIT, the assessee has filed appeal before the Tribunal. The Tribunal vide its order dated 6.7.2021 in ITA No.3010/Del/2017 quashed the order of the Ld. Pr. CIT passed under section 263 of the Act. A copy thereof was placed on record. The Tribunal has discussed the matter in para 25 to 35, pages 44 to 53 of its order (supra).

7. We have heard the Ld. Representative of the parties and perused the order (supra) of the Tribunal. For detailed reasons recorded by it, the Tribunal vide its order (supra) set aside the order of the Ld. Pr. CIT passed under section 263 of the Act. The assessment order dated 6.12.2017 passed by the Ld. AO as per the direction of the Ld. Pr. CIT under section 263 of the Act, which order of the Ld. Pr. CIT stands quashed, the impugned assessment order itself does not survive. In this view of the matter, the order

of the Ld. CIT(A) confirming the additions against which the assessee is in appeal before us becomes non-est in the eye of law.

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

Order pronounced in the open court on 18th January, 2023.

sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Dated: 18/01/2023

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	