

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.1673/Del/2022

निर्धारणवर्ष/Assessment Year: 2010-11

Deep Karan Dalal 21, MLA Flats, Sector 3, Chandigarh - 160010	बनाम Vs.	DCIT, Central Circle-31, New Delhi. (Formerly ITO, Ward 1(3), Chandigarh)
PAN No. AJYPD2534K		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

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आ.अ.सं./I.T.A No.1674/Del/2022

निर्धारणवर्ष/Assessment Year: 2010-11

Udai Karan Dalal 21, MLA Flats, Sector 3, Chandigarh - 160010	बनाम Vs.	DCIT, Central Circle-31, New Delhi.
PAN No. AJYPD2535J		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Shri Neeraj Jain, CA
राजस्वकीओरसे /Revenue by	Shri Om Prakash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	01.11.2022
उद्घोषणाकीतारीख/Pronouncement on	24.01.2023

**आदेश /O R D E R**

These two appeals are filed by the different assesseees of same group against different orders of the Ld. CIT(Appeals)-30, New Delhi dated 26.05.2022 for the AY 2010-11. The assessee Deep Karan Dalal in ITA No. 1673/Del/2022 raised the following grounds of appeal: -

1. *“That the order of learned Commissioner of Income Tax (Appeals) is bad in law as well as on the facts and in the circumstances of the case.*
2. *That the Ld. CIT(Appeals) in the facts and circumstances of the case has erred in not appreciating that the order passed by the Ld. AO was illegal and without jurisdiction.*
3. *That the Ld. CIT(Appeals), in the facts and circumstances of the case, has erred in not appreciating that the order passed by the ld. AO was without providing proper opportunity of being heard and was against the principles of natural justice.*
4. *That the ld. CIT(Appeals) has erred in sustaining a double addition of Rs.39,00,000/- already assessed in the hands of M/s. Angad & Sons Realcon Pvt. Ltd. vide assessment order dated 18.12.2017 in their case.*
5. *That the ld. CIT(Appeals) has erred in not appreciating that after the search on 14.09.2017 the pending assessment proceedings on the date of search had abated.*
6. *That the ld. CIT(Appeals) has erred in sustaining the addition of Rs.39,00,000/- made by the Assessing Officer by treating the above said amount as unexplained investment from undisclosed sources.*
7. *The above grounds of appeal are without prejudice to each other.”*

2. Similarly the assessee Udai Karan Dalal has raised verbatim identical grounds.

3. The Ld. Counsel for the assessee at the outset submits that the additions made in both these cases in respect of share application money in the Company named M/s Angad & Sons Realcon Pvt. Ltd. is pending before the Settlement Commission and is sub-judice. Reference was made to page 11 of the Paper Book which is the order passed by the

Settlement Commission in case of Angad & Sons Realcon Pvt. Ltd. for the assessment years 2008-09 to 2018-19. The Ld. Counsel further submits that an assessment u/s 144 r.w.s. 147 of the Act was made on 18.12.2017 in the case of Angad & Sons Realcon Pvt. Ltd., wherein an addition of Rs.1,98,00,000/- was made which include Rs.78 lakhs (39,00,000 + 39,00,000) towards increase in share capital or share premium in the name of the assesseees Deep Karan Dalal & Udai Karan Dalal.

3.1 The Ld. Counsel further submits that even though a prayer was made before the Ld. CIT(A) for keeping the proceedings in abeyance till such time the Settlement Commission passes an order in the case of Angad & Sons Realcon Pvt. Ltd. which has bearing on the additions made in the case of these assesseees the Ld. CIT(Appeals) dismissed the appeals of the assessee ex parte. The Ld. Counsel for the assessee further submits as under: -

1. *“The case of the appellant for AY 2010-11 was reopened u/s 148 of the Income Tax Act, 1961 on 30.03.2017.*
2. *A return of income was filed on 25.04.2017 in response to notice u/s 148 through e- filing portal declaring nil income.*
3. *The jurisdiction of the case was transferred to ITO, Ward - 3(3), Chandigarh on 27.09.2017.*
4. *Notices u/s 142(1) of the Act were issued on 10.10.2017, 01.11.2017 and show cause notice was issued on 08.12.2017.*
5. *A search and seizure proceedings were initiated on the appellant's residential and business premises on 14.09.2017 and concluded on 30.10.2017.*
6. *The appellant could not avail the opportunity of being heard that was provided to the appellant as a result of*

*search proceedings conducted against the appellant and his entire group.*

7. *As a result of search, the appellant was held up in the investigation process being conducted by the Investigation Wing at Delhi whereas the proceedings u/s 148 were being conducted in Chandigarh.*

*Hence, for reasons beyond control, the appellant could not avail the opportunity of being heard and present his case before the Id. AO. which resulted in an ex-parte order u/s 144/147 was passed on 20.12.2017.*

8. *The ex-parte order was bad in law for the following reasons:*

- a. *The re-opening of the assessment has been made on the ground that the assessee has failed to explain the sources of investment made for share capital/share premium paid during the year amounting to Rs. 39,00,000/- in M/s. Angad & Sons (P) Limited and M/s. Angad & Sons Realcon Pvt. Ltd.*

*It is submitted that the reasons recorded for re-opening were factually incorrect for the reason that the appellant had not made any investment in M/s. Angad & Sons (P) Limited rather there was no such company in the records of the ROC and in so far as investment in M/s. Angad & Sons Realcon Pvt. Ltd. is concerned, the increase in share capital during the year of M/s. Angad & Sons Realcon Pvt. Ltd. was of Rs. 39,00,000/- (Copy of Balance sheet at pg. 8 to 9).*

*Therefore the reopening itself per se was bad in law and without application of mind of the Id. AO resulting in an addition of Rs. 39,00,000/- which was totally wrong.*

- b. *The Id. AO ITO Ward 1(1), Faridabad has framed an assessment in the case of M/s. Angad & Sons Realcon Pvt. Ltd. u/s 144 r.w.s 147 of the Act vide order dated 18.12.2017 (Copy of assessment order at pgs. 1 to 7). In the said assessment order, an addition of Rs. 1,98,00,000/- has been made which include Rs. 39,00,000/- towards increase in share capital / share premium in the name of the appellant Sh. Deep Karan Dalai.*

*The case of M/s. Angad & Sons Realcon Pvt. Ltd. for AY 2008-09 to 2018-19 is pending before the Income Tax Settlement Commission and is sub-judice (Copy of order u/s 245D(1) by Income Tax Settlement Commission allowing the case to be proceeded with is enclosed at pgs 11 to 20).*

*Before the Id. CIT(A) the appellant had prayed for keeping the proceedings in abeyance till such time that the Hon'ble Income Tax Settlement Commission takes a view in the case of M/s. Angad & Sons Realcon Pvt. Ltd. since the order of the Hon'ble Income Tax Settlement Commission is conclusive in nature. The Id. CIT(A) sustained the order passed by the Id. AO which was against the principles of natural justice."*

4. Therefore, the Ld. Counsel submits that the matter may be restored to the file of the Assessing Officer for *denovo* assessment keeping in view the order of the Settlement Commission in the case of Angad & Sons Realcon Pvt. Ltd.

5. The Ld. DR placed reliance on the orders of the authorities below.

6. Heard rival submissions, perused the orders of the authorities below. In these cases the assessments were reopened u/s 147 of the Act pursuant to search proceedings conducted against the assessee as per the provisions of Section 153A of the Act. In the course of reassessment proceedings the Assessing Officer has issued several notices and questionnaires requiring the assessee to explain the source of investments made by Assesseees in Angad & Sons Pvt. Ltd. and Angad & Sons Realcon Pvt. Ltd. towards share capital/share premium during the AY 2010-11. The assesseees failed to comply with the notices in all

stages. The assessee never replied nor responded to any of the notices of the Assessing Officer. The Assessing Officer based on the information available with him and the records, came to know that the assessee has made investment of Rs.39 lakhs each in two Companies namely Angad & Sons Pvt. Ltd. and Angad & Sons Realcon Pvt. Ltd. and these investments have been treated as unexplained investments by the Assessing Officer in the absence of any response from the assessee. Before the Ld. CIT(A) the assessee contended that there is a petition pending before the Settlement Commission in the case of Angad & Sons Realcon Pvt. Ltd. for AY 2010-11 and the outcome of the decision of the Settlement Commission will have bearing on the appeals of the assessee. The contention of the assessee was negated by the Ld. CIT(A) observing as under:

*“6. The submission filed by the appellant has been perused along with the order u/s 245(D)(1) of the Income Tax Act enclosed along with the letter. It has been noted that the appellant has not filed any application before Hon’ble Settlement Commission for the Assessment Year 2010-11.*

*It has also been noted that M/s Angad and Sons Realcon Private Limited has also not offered any additional income in the year 2010-11 as claimed by the appellant in his letter filed on 20.05.2022. I therefore, find that there is no proceeding pending before Hon’ble Income Tax Settlement Commission on issue at hand in this proceeding.*

*The appellant has not provided any material explaining the source of funds amounting to Rs. 39 lakhs invested by him in M/s Angad and Sons Realcon Private Limited either before the Assessing Officer in the assessment proceeding or before the undersigned in the appellate proceeding.*

*In absence of any material available on record, there is no basis to interfere with the order of the Assessing Officer.*

**Accordingly, the addition made by the Assessing Officer is sustained and the appeal filed by the appellant is dismissed.”**

7. It is observed that even the Ld. CIT(A) passed an *ex parte* order as the assessee did not provide any explanation/source for the investment made in the Companies. The Ld. Counsel in the written submissions explained the reasons why the assessee could not appear before the Assessing Officer in the assessment proceedings and before the Ld. CIT(A) it was requested to keep the proceedings in abeyance. The submissions of the assessee are as under: -

1. *“The case of the appellant for AY 2010-11 was reopened u/s 148 of the Income Tax Act, 1961 on 30.03.2017.*
2. *A return of income was filed on 25.04.2017 in response to notice u/s 148 through e- filing portal declaring nil income.*
3. *The jurisdiction of the case was transferred to ITO, Ward - 3(3), Chandigarh on 27.09.2017.*
4. *Notices u/s 142(1) of the Act were issued on 10.10.2017, 01.11.2017 and show cause notice was issued on 08.12.2017.*
5. *A search and seizure proceedings were initiated on the appellant's residential and business premises on 14.09.2017 and concluded on 30.10.2017.*
6. *The appellant could not avail the opportunity of being heard that was provided to the appellant as a result of search proceedings conducted against the appellant and his entire group.*
7. *As a result of search, the appellant was held up in the investigation process being conducted by the Investigation Wing at Delhi whereas the proceedings u/s 148 were being conducted in Chandigarh.*

*Hence, for reasons beyond control, the appellant could not avail the opportunity of being heard and present his case before the Id. AO. which resulted in an ex-parte order u/s 144/147 was passed on 20.12.2017.*

8. *The ex-parte order was bad in law for the following reasons:*

- a. *The re-opening of the assessment has been made on the ground that the assessee has failed to explain the sources of investment made for share capital/share premium paid during the year amounting to Rs. 39,00,000/- in M/s. Angad & Sons (P) Limited and M/s. Angad & Sons Realcon Pvt. Ltd.*

*It is submitted that the reasons recorded for re-opening were factually incorrect for the reason that the appellant had not made any investment in M/s. Angad & Sons (P) Limited rather there was no such company in the records of the ROC and in so far as investment in M/s. Angad & Sons Realcon Pvt. Ltd. is concerned, the increase in share capital during the year of M/s. Angad & Sons Realcon Pvt. Ltd. was of Rs. 39,00,000/- (Copy of Balance sheet at pg. 8 to 9).*

*Therefore the reopening itself per se was bad in law and without application of mind of the Id. AO resulting in an addition of Rs. 39,00,000/- which was totally wrong.*

- b. *The Id. AO ITO Ward 1(1), Faridabad has framed an assessment in the case of M/s. Angad & Sons Realcon Pvt. Ltd. u/s 144 r.w.s 147 of the Act vide order dated 18.12.2017 (Copy of assessment order at pgs. 1 to 7). In the said assessment order, an addition of Rs. 1,98,00,000/- has been made which include Rs. 39,00,000/- towards increase in share capital / share premium in the name of the appellant Sh. Deep Karan Dalai.*

*The case of M/s. Angad & Sons Realcon Pvt. Ltd. for AY 2008-09 to 2018-19 is pending before the Income Tax Settlement Commission and is sub-judice (Copy of order u/s 245D(1) by Income Tax Settlement Commission allowing the case to be proceeded with is enclosed at pgs 11 to 20).*

*Before the Id. CIT(A) the appellant had prayed for keeping the proceedings in abeyance till such time that the Hon'ble Income Tax Settlement Commission takes a view in the case of M/s. Angad & Sons Realcon Pvt. Ltd. since the order of the*

*Hon'ble Income Tax Settlement Commission is conclusive in nature. The Id. CIT(A) sustained the order passed by the Id. AO which was against the principles of natural justice."*

8. Taking the totality of facts and circumstances into consideration and since the assessments were made under 144 r.w.s. 147 of the Act and the Ld. CIT(A) also passed ex parte order rejecting the submission of the assesseees to keep the appeal proceedings in abeyance and in the interest of justice, these appeals are restored to the file of the Assessing Officer for *denovo* assessment in accordance with law. The Assessing Officer shall provide adequate opportunity of being heard to the assesseees. The assesseees are at liberty to file necessary evidences in support of their claims. Grounds raised by the assessee are allowed for statistical purpose.

9. In the result, appeals of the assesseees are allowed for statistical purpose.

Order pronounced in the open court on 24/01/2023

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Dated: 24.01.2023

\*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi