

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
BEFORE,
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.821/Del/2020
(ASSESSMENT YEAR 2011-12)**

Sh. Dharambir Khattar 54, Sukhchain Marg DLF Phase-II Gurgaon Haryana- 122 001 PAN-AAMPK 7881M	Vs.	Asst.CIT, Central Circle-6 New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Yogesh Kumar Jagia, Adv. And Sh. Manoj Gupta, CA
Respondent by	Ms. Ranjit Kaur, Senior Departmental Representative ("Sr.-DR" for short)

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-35, Delhi [Ld. CIT(A)", for short], dated 23/12/2019 for Assessment Year 2011-12. Grounds taken in this appeal are as under:

"(a) That in the facts and circumstances of the case and in law the impugned order passed by Ld. CIT(A) being contrary to the settled principles of law and provisions of Income Tax Act is liable to be set aside.

(b) That in the facts and circumstances of the case and in law, Ld. CIT(A) grossly erred in upholding initiation of reassessment proceedings in view of the fact that:-

- i. Initiation of reassessment proceedings have been upheld in summary manner without assigning reasons*
- ii. Ld. CIT(A) failed to appreciate the issues raised and substantiated in written submissions filed*
- iii. Ld. CIT(A) failed to appreciate that sanction u/s 151 was contrary to settled principles of law.*

(C) That in facts and circumstances of the case and in law, Ld. CIT(A) erred in holding that Laws of evidence are not strictly applicable in income tax proceedings to justify action of Ld. AO in not allowing cross examination of statements of third parties relied upon.

(d) That in facts and circumstances of the case and in law, Ld. CIT(A) erred in not appreciating that assumption of jurisdiction to assess is mandatory by issuing notice u/s 143(2) of Act before issuing questionnaire u/s 142(1) and show cause notice and hence re-assessment order passed is liable to be quashed.

(e) That in facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming addition of Sale Proceeds of Equity Shares under section 69A of Act by substituting with section 68 of Act.

(f) That in facts and circumstances of the case and in law, Ld. CIT(A) failed to adjudicate challenge to order passed by Ld. AO rejecting the objections filed to issue of notice u/s 148 of Act.

(g) That in facts and circumstances of the case and in law, Ld. CIT(A) while adjudicating appeal proceeded beyond assessment order and assessment record and referred and relied upon material outside the assessment record without giving any opportunity to appellant.

(h) That in the facts and circumstances of the case and in law Ld. CIT(A) in para 4.10 of impugned order relied upon material non- germane to the transaction in question and outside the assessment record.

(i) That in facts and circumstances of the case and in law Ld. CIT(A) erred in upholding assessment which was completed by Ld. Assessing officer without application of his mind and only in compliance of directions issued by investigation wing through seniors of assessing officer thereby

violated principles governing administration of justice by quasi-judicial authorities.

(j) That in facts and circumstances of the case and in law Ld. CIT(A) erred in not allowing set off of short term capital loss against addition made u/s 69A of Act or alternatively right to carry forward the same.

(k) That appellant craves leave to amend or alter grounds of appeal before adjudication of appeal and also craves leave to file paper book before commencement of hearing of appeal.

PRAYER:

That in the facts and circumstances of the case and in law the appellant most humbly prays that this Hon'ble Tribunal may please to: -

- a) Quash and set aside re-assessment proceedings initiated by issue of notice dated 31.03.2018 issued u/s 148 of the Act for assessment year 2011-12 and consequent order dated 30/11/2018 rejecting the objections of the Appellant to the same.*
- b) Quash and set aside show cause notice dated 30.11.2018 issued without assuming mandatory jurisdiction u/s 143(2) of Act.*
- c) Pass an order declaring re-assessment order passed under section 147/143(3) of Act as null and void.*
- d) Pass an order declaring that addition made of sale of shares cannot be made under the provisions of section 69A of Act.*
- e) Pass an order allowing set off of short term capital loss against addition made or alternatively allowing right to carry forward the same.*
- f) Pass such or further order as your good self may deem fit and proper in the facts and circumstances of the case, in favor of appellant.”*

(B) In this case, assessment order dated 30/12/2018 was passed by the Assessing Officer u/s 147 of Income Tax Act wherein the assessee's income was assessed at Rs.3,03,93,000/- as against

the returned income of Rs.9,47,692/-. The assessee's appeal against the aforesaid assessment order dated 30/12/2018 was dismissed by the Ld. CIT(A) vide impugned appellate order dated 23/12/2019 of the Ld. CIT(A). The present appeal before us, has been filed by the assessee against the aforesaid impugned appellate order dated 23/12/2019 of the Ld. CIT(A).

(C) At the time of hearing before us, the Ld. Counsel for the assessee submitted the assessee had taken specific ground against initiation of re-assessment proceedings u/s 147 of Income Tax Act through issue of notices u/s 148 of Income Tax Act. He further submitted that the Ld. CIT(A), in her impugned appellate order dated 23/12/2019, failed to decide this issue regarding validity of initiation of proceedings u/s 147 read with Section 148 of Income Tax Act, through a speaking order. He drew our attention to the relevant portion of the impugned appellate order dated 23/12/2019 and contended that the issue was decided by the Ld. CIT(A) in a summary and non speaking manner. He submitted that the impugned appellate order dated 23/12/2019 of the Ld. CIT(A) should be set aside and all the issues in dispute should be restored

back to the file of the Ld. CIT(A) with the direction to pass fresh order in accordance with law after providing reasonable opportunity to the assessee. He further submitted that the Ld. CIT(A) should be directed to pass a speaking order on all the issues raised in the grounds of appeal in the appeal filed by the assessee in the office of the Ld. CIT(A). The Ld. Sr. DR for Revenue did not dispute or contradict the submissions and contention made by the Ld. Counsel for the assessee. The representatives of both sides, the Ld. Sr. DR for Revenue as well as the Ld. Counsel for the assessee were in agreement that the impugned appellate order dated 23/12/2019 of the Ld. CIT(A) should be set aside; and all the issues in dispute should be restored to the file of the Ld. CIT(A) with the direction to pass a fresh order in accordance with law after providing reasonable opportunity to the assessee; and they were further in agreement that the Ld. CIT(A) should also be directed to decide all the issues in dispute through a speaking order.

(E) In view of the foregoing, and as representatives of both sides are in agreement with this, in the specific facts and circumstances of the present appeal before us, we hereby set aside the impugned

appellate order dated 23/12/2019 of the Ld. CIT(A) and we restore all the issues in dispute back to the file of the Ld. CIT(A) with the direction to pass a fresh order in accordance with law after providing reasonable opportunity to the assessee; and we also direct the Ld. CIT(A) to decide all issues in appeal through a speaking order. All grounds of appeal are treated as disposed off in accordance with aforesaid directions.

(F) For statistical purposes, the appeal is treated as partly allowed.

(G) This order was pronounced on 02/02/2023 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing and is signed on 02/02/2023

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 02/02/2023

Pk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI