

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

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

**ITA No.1626/Del./2022
(ASSESSMENT YEAR : 2018-19)**

Anil Seth,
B-2/1, Glaxo Apartments,
Mayur Vihar Phase I,
Delhi – 110 091.

vs. DCIT, Circle 70 (1),
New Delhi.

(PAN : AHJPS6329L)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri J.S. Kochar, CA
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 20.03.2023
Date of Order : 23.03.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 20.05.2022 pertaining to the Assessment Year 2018-19.

2. The grounds of appeal taken by the assessee read as under :-

“1. The assessment order is null and void and legally unsustainable, having been passed in gross violation of the provisions of E-assessment Scheme, 2019, as notified vide S.O. 3264(E) dated 12/09/2019 as:

(a) No oral hearing through video conferencing was afforded after the Assessee objected to proposed variations to the returned income in response to the second draft assessment order dated 10/03/2021, despite the specific request of the Assessee made for the same on 13/03/2021 and repeated on 15/03/2021.

(b) Assessee's objections to the second draft assessment order conveyed vide notice dated 10/03/2021, which were filed on 13/03/2021, were not even adverted to, much less considered, in the final assessment order dated 15/03/2021.

(c) Assessment order was passed even before the time of objecting to the draft assessment order had expired.

2. The assessment order is bad in law as it does not even make a determination of the Total Income of the Assessee as required u/s 143(3) of the Income Tax Act, 1961.

3. The Id. CIT(A) erred in confirming the addition made by the AO on a ground different from the ground on which it was made by the AO, without putting the Assessee on notice and without affording an opportunity to him to make its submissions on the ground taken by CIT(A) to confirm the addition.

4. The Id. CIT(A) erred in holding that an ex-gratia payment of Rs.94,26,110 received as 'Severance payment' by the Assessee from his employer, without there being any obligation on its part to pay the same, was covered under the provisions of Section 17(3) of the Income Tax Act, 1961, without specifying the specific clause of the sub section under which it was covered and contrary to the law laid down by the jurisdictional and other High Courts.

3. At the outset, in this case, Id. Counsel of the assessee prayed that the first two grounds are legal grounds which were not taken before the authorities below. He further prayed that on merits also, assessee has

relied upon Hon'ble Delhi High Court decision which was distinguished by the authorities below without proper reasoning. Hence, he prayed that the issue may be remitted back to the file of Id. CIT (A) to decide afresh including the legal grounds.

4. Having heard both the parties and perusing the records, we are inclined to remit the issue to the file of Id. CIT (A). Ld. CIT (A) is directed to decide the issue afresh including the legal grounds taken for the first time.

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

Order pronounced in the open court on this 23rd day of March, 2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 23rd day of March, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**