

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE,
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.1804/Del/2016
(ASSESSMENT YEAR 2010-11)**

M/s Shiv Naresh Sports Pvt. Ltd. E-23, Karam Pura Delhi-110 015 ***** CA. SB. Gupta-9 Atta-ur-rehman Lane Civil Lines 110 054 PAN-AAECS 7326L	Vs.	Asst. CIT Central Circle-5 New Delhi
(Appellant)		(Respondent)

Appellant by	Mr. Mormukut, Advocate
Respondent by	Mr. T. Kipgen, Commissioner of Income Tax, Departmental Representative ("CIT- 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)-24, New Delhi ["Ld. CIT(A)",

for short], dated 31/03/2015 for Assessment Year 2010-11.

Grounds taken in this appeal are as under:

“1. That the Ld. CIT (Appeals) erred in rejecting the rectification application u/s 154 filed by the assessee for non-disposal of additional ground of appeal raised during the course of hearing, particularly in view of the fact that the Ld. CIT (Appeals) called for remand report on additional evidence relevant solely to such additional ground from the Assessing Officer who duly submitted report on the same.

2. That the Id. Commissioner of Income Tax (Appeal) erred in not disposing off the additional ground of appeal, taken by the assessee during the course of appeal proceedings, with respect to illegal and unjustified addition of share capital of Rs. 58,33,340/-.

3. That the order passed u/s 153A is illegal and unjustified and, therefore, ought to be quashed.

4. That the initiation of search proceedings u/s 132 and the issue of notice u/s 153A is without proper assumption of jurisdiction and the consequent order u/s 153A/143(3) is illegal and, therefore, ought to be quashed.

5. That the addition of Rs. 58,33,340/- in respect of share capital is illegal and unjustified and, therefore, ought to be deleted.

6. That the addition of Rs. 58,33,340/- in respect of share capital, without having any relevance or nexus with any material seized during the course of search, is illegal and unjustified and, therefore, ought to be deleted.

7. That the addition of Rs. 58,33,340/- in respect of share capital, without any incriminating material found during the course of search, is illegal and unjustified and, therefore, ought to be deleted.

8. That in view of the Remand Report furnished by the Assessing Officer during the course of appeal proceedings with the Commissioner of Income Tax (Appeal), admitting confirmation by the share applicants and nothing adverse on record, the addition of Rs.

58,33,340/- in respect of share capital is illegal and unjustified and, therefore, ought to be deleted.

9. That in view of the addition of share capital deleted by the Commissioner of Income Tax (Appeal) for AY 2008-09 and 2009-10 on the basis of the Remand Report furnished by the Assessing Officer during the course of appeal proceedings with the Commissioner of Income Tax (Appeal), admitting confirmation by the share applicants and in view of the same Remand Report for AY 2010-11, which is under consideration, the addition of Rs. 58,33,340/- in respect of share capital for AY 2010-11 is illegal and unjustified and, therefore, ought to be deleted.

10. That the appellant craves to add, delete, amend or modify the ground at the time of hearing.”

(B) In this case, the assessment order dated 28/03/2013 was passed by Assessing Officer (“AO”, for short) under section 153A/143(3) of Income Tax Act, wherein the assessee’s total income was assessed at Rs.1,47,57,171/- as against returned income of Rs.69,92,830/-. The assessee’s appeal against the aforesaid assessment order was disposed off by Ld. CIT(A) vide appellate order dated 31/03/2015 whereby the assessee’s appeal was partly allowed. The assessee filed an application u/s 154 of Income Tax Act in the office of the Ld. CIT(A), seeking rectification of the aforesaid appellate order dated 31/03/2015. Vide order dated 16/02/2016, the Ld. CIT(A) dismissed the assessee’s application u/s 154 of Income Tax Act seeking rectification of the aforesaid

appellate order dated 31/03/2015. The present appeal has been filed by the assessee against the aforesaid order dated 16/02/2016 of the Ld. CIT(A), whereby the assessee's application u/s 154 of Income Tax act was dismissed by the Ld. CIT(A).

(B.1) In the course of appellate proceedings, a letter dated 28/03/2023 was filed by the assessee's side, seeking withdrawal of this appeal. The relevant portion of the aforesaid letter dated 28/03/2023 is reproduced as under:

"The Commissioner (Appeal)-24, New Delhi, against whose order U/s 154 the assessee had filed appeal before your honours, has now granted relief to the assessee by revising his order.

Hence, the present appeal has become infructuous. Therefore, the assessee seeks liberty for withdrawn of the present appeal subject to restoration thereof in the event of the relief granted by Commissioner (Appeal) getting withdrawn by him at any later stage."

(B.2) At the time of hearing before us, the Ld. Counsel for the assessee drew our attention to the aforesaid letter dated 28/03/2023 and sought permission for withdrawing this appeal. The Ld. CIT-DR for Revenue expressed no objection to withdrawal of the appeal by the assessee.

(B.2.1) In view of the foregoing, in the specific facts and circumstances of the present appeal before us, this appeal filed by the assessee is dismissed, the appeal having been withdrawn by the assessee. The assessee will be at liberty to approach Income Tax Appellate Tribunal (“ITAT” for short) in accordance with law for restoration of this appeal, if the relief granted by the Ld. CIT(A) is withdrawn at later stage. If the assessee does approach ITAT in future for restoration of the appeal; the matter will be decided having regard to applicable law and relevant facts and circumstances.

(C) In the result, this appeal filed by the Assessee is dismissed as withdrawn.

This order was orally pronounced in Open Court on 29/03/23 in the presence of representatives of both sides, after conclusion of the hearing and this order in writing is signed today on - 10/04/2023.

Sd/-
(CHALLA NAGENDRA PRASAD) (ANADEE NATH MISSHRA)
JUDICIAL MEMBER ACCOUNTANT MEMBER

Dated: 10/04/2023
Pk

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI