

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

ITA No. 5540/Del/2016 : Asstt. Year: 2009-10

Ajit Singh Malik, S/o Sh. Ram Phal Malik, VPO Nangel Kheri, Tehsil & Distt. Panipat, Haryana-132103	Vs	Income Tax Officer, Ward-1, Panipat
(APPELLANT)		(RESPONDENT)
PAN No. AJGPM1615C		

**Assessee by : Sh. Ajit Kumar Jha, Adv.
Revenue by : Sh. Om Parkash, Sr. DR**

Date of Hearing: 18.05.2023

Date of Pronouncement: 20.06.2023

ORDER

The present appeal has been filed by assessee against the order of Id. CIT(A), Karnal dated 16.08.2016.

2. Following grounds have been raised by the assessee:

"1. The order of the assessing officer is erroneous on the facts and in the law. On the facts and in the circumstances of the case he ought to have accepted the returned income.

2. The learned assessing officer is not justified in treating the business income from sale/purchase of building material by the appellant, which was filled under u/s 44(AF) of Income tax 1961, on the plea that a documentary evidences submitted was not sufficient for the above business income. On the facts and in the circumstances of the case, as per the said section, the assessee no way to required maintaining the books of accounts. So, he ought to have accepted the as sufficient evidences have been produced such as Cash Flow statement, Bank Pass Book of the assessee.

3. The learned assessing officer is not justified in treating the amount received from sale of agriculture land. On the facts and in the circumstances of the case he has failed to appreciate the prevailing circumstances in the said transaction.

4. The learned assessing officer is not justified in not affording another opportunity to the appellant to produce a affidavit from Mr Arjun Kumar. On the facts and in the circumstances of the case he ought not have completed the assessment hastily."

3. The assessment in this case has been completed on 13.03.2015 by the ITO, Ward-1, Panipat making additions to the tune of Rs.27,83,800/-. The assessee filed appeal before the Id. CIT(A) who has affirmed the action of the AO vide order dated 16.08.2016. Aggrieved, the assessee filed appeal before the Tribunal on 16.09.2016. The appeal has been dismissed on 22.12.2016 owing to non-attendance of the assessee. The order has been recalled vide order dated 05.01.2018 and order of the ITAT has been passed on 12.03.2018. This order of the ITAT has been recalled vide order dated 28.02.2023. Subsequently, the hearing was held on 18.05.2023.

4. Heard the arguments of both the parties and perused the material available on record.

5. On perusal of the Assessment Order, order of the Id. CIT(A) and statement of facts, it is found that the examination of Sh. Arjun Kumar who was the alleged purchaser and the fact of assessee being the business have not been undertaken on a judicious way. From the record, it is established that no prejudice would be caused to the revenue if an opportunity is given to the assessee to represent himself properly before the revenue authorities. Hence, the matter is remanded to the file

the AO to adjudicate the issue afresh *de novo*. The assessee shall comply promptly to the notices issued by the revenue from time to time and shall not misuse the opportunity given by the Tribunal.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 20/06/2023.

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated:20/06/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR