

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.136/Asr/2023  
Assessment Year: 2009-10**

Smt. Satinder Kaur, H.No. 379 VPO Dakoha, Jalandhar. [PAN: -BBNPS6491L] <b>(Appellant)</b>	Vs.	ITO-Ward-2(4), Jalandhar.  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Daljit Singh Chhabra, Adv.
<b>Respondent by</b>	Sh. Pradeep Kumar, Sr. DR

<b>Date of Hearing</b>	14.06.2023
<b>Date of Pronouncement</b>	21.06.2023

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT (A)’],order passed u/s 250of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y. 2009-10. The impugned order was emanated from the order of the Id. Income

Tax Officer, Ward-2(4), Jalandhar, [in brevity 'the AO'] order passed u/s 143(3) r.w.s. 263 of the Act.

2. The assessee has taken the following grounds:

*“1. That the order of Ld.C.I.T(A) (NFSC) is against the Law, arbitrary and not based on facts*

*2. That the Ld.C.I.T (A) has not applied his mind while passing the order. The details on introductory para belongs to appellant whereas the facts narrated in body of order belongs to some unknown appellant.*

*3. Such other grounds as may be urged at the time of hearing.”*

3. Brief fact of the case is that the assessment was completed u/s 143(3) r.w.s. 263 of the Act with addition amount of Rs.17,82,220/- under the head of long-term capital gain. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) passed an order. The grievance of the assessee is that during passing the appeal order reasonable opportunity was denied for the assessee. The appeal order was passed by rejecting the ground of appeal of the assessee. Being aggrieved the assessee filed an appeal before us.

4. The Id. Counsel for the assessee filed a written submission which is kept in the record. The Id. AR invited our attention on the notice u/s 250 of the Act which

was issued by the Id. CIT(A) on dated 21.03.2023 & was directed to furnish submission before the Id. CIT(A) on or before the date 27.03.2023. Copy of the notice is enclosed in **APB page nos. 24 to 26**. But the appeal order was passed on dated 21.03.2023 for impugned assessment year related DIN& Order No. ITBA/NFAC/S/250/2022-23/1051066124(1). The Id. AR claimed that without considering the submission of the assessee the appeal order was passed in hurry would tantamount in violation of principle of natural justice. Again the Id. CIT(A) does not satisfy the basis of natural justice by violating the reasonable opportunity. It is open to the Income Tax Authority to ignore the evidence/submissions and request made by the party to give them adjournment to submit the submission. It is not the object of the judicial authority/ quasi-judicial authority to pass the order without documentary submission of the assessee. The object is to find the correct fact and thereafter applied the law to those facts and take a decision in terms thereto require. Accordingly, the proceeding u/s 250 of the Act is ignoring the submission of the assessee against the notice is violation of opportunity of hearing and the natural justice. The Id. AR relied on the order of the Coordinate Bench of ITAT, Amritsar in the case of assessee's own case in **ITA 243/Asr/2019 date of order 26.11.2019**. The relevant paragraph is extracted as below:

*“We note that Hon’ble Supreme Court in the case of Gita Devi Aggarwal vs. CIT 76 ITR 496 (SC) held that section 263 does not in express terms require a notice to be served as in the case of section 147 of the Act. Section 263 merely requires that an opportunity of being heard should be given to the assessee. We note that in assessee’s case under consideration, the opportunity has not been given by the ld. Pr. CIT and he passed the order within two days without getting the submissions of the assessee which is against the principle of natural justice. The principle of “audi alteram partem” only means that the party affected should be given sufficient opportunity to meet the case against him. Hence, we note that order passed by the ld. Pr. CIT is against the principles of natural justice. Therefore, we quash the order of ld. Pr. CIT.*

5. The ld. DR fully relied on the order of the revenue authorities and does not make any objection against the fact of the case.

6. We heard the rival submission and relied on the documents available in the record. The assessee was denied submitting the evidence before the ld. CIT(A) for passing the order prior to the fixing date. The *audi alterum partem* was denied and clear violation of the natural justice. We are, therefore, of the opinion that interest

of justice would be sub served if the impugned order is set aside and the matters are remitted back to the Id. CIT(A) for consideration thereof afresh. We are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing for setting aside proceedings.

7. In the result, the appeal of the assessee bearing **ITA No. 163/Asr/2023** is allowed for statistical purposes.

**Order pronounced in the open court on 21.06.2023**

Sd/-

**(Dr. M. L. Meena)**  
**Accountant Member**

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

Sd/-

**(ANIKESH BANERJEE)**  
**Judicial Member**

True Copy  
By order