

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

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

**ITA No.108/Del./2023
(ASSESSMENT YEAR : 2017-18)**

Varsha Gupta,
82, Jagannath Puri,
T.P. Nagar,
Meerut – 250 002 (Uttar Pradesh).

vs. ITO, Ward 1(2)(4),
Meerut.

(PAN : ACVPG9574G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ramit Kakkar, Advocate
REVENUE BY : Shri Amit Katoch, Sr. DR

Date of Hearing : 10.08.2023
Date of Order : 14.08.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)/NFAC dated 21.12.2022 pertaining to the assessment year 2017-18.

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

“1. On the facts and in the circumstances of the case, the Id Commissioner of Income tax (Appeals) has erred in sustaining the addition made by the AO at Rs.22,42,644/- solely on the basis of entries in Form 26AS of Smt Versha Rani Gupta.

2. The Id. CIT(A) erred in appreciating the fact that the receipts of Rs.27,54,046 pertains to a firm M/s Shiva Enterprises, in which assessee is

a partner and these receipts have been declared in the ITR of MIs Shiva Enterprises and taxed therein, thus taxing the same receipts twice over.

3. That the Id Commissioner of Income Tax (Appeals) has erred In not appreciating the fact that assessee's first appeal was against the CPC, not acting on the assessee's petition u/s 154 of the I T Act, 1961.”

3. In this case, intimation under section 143(1) of the Income-tax Act, 1961 (for short 'the Act') was passed on 31.08.2018 at an income of Rs.27,54,046/- instead of returned income of Rs.5,20,992/-. The addition was made on the basis of Form 26AS. The assessee filed rectification petition under section 154 of the Act. However, in the rectification order, no change was made in the intimation u/s 143(1) of the Act.

4. Against this, assessee appealed before the Id. CIT (A). Firstly, Id. CIT (A) held that the issue is not arising out of 154 order and assessee should have challenged the order passed u/s 143(1) of the Act. Still, he held the matter on merits that assessee is claiming that the receipts shown in the name of the assessee are already subsumed in the receipts of the firm, M/s. Shiva Enterprises, in which the assessee is 99% partner. However, Id. CIT (A) held no break-up and details has been given, hence he dismissed the assessee’s appeal. He also noted that Form 26AS of the Firm was not submitted.

5. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

6. We find that assessee is claiming that the assessee is a partner in the firm, M/s. Shiva Enterprises and the firm has duly accounted all the income. Since the contract was originally in the name of the assessee, the TDS was shown in her name. Hence, it is a request of the Id. Counsel of the assessee to remand the matter to the file of AO for factual verification of the submission of the assessee. Ld. DR of the Revenue fairly agreed to the proposition. Hence, in the interest of justice, we remit the issue to the file of AO. The AO is directed to consider the issue afresh by going through the submissions of the assessee.

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

Order pronounced in the open court on this 16th day of August, 2022.

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

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

Dated the 16th day of August, 2022/TS

Copy forwarded to:

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

**AR, ITAT
NEW DELHI.**