

**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. 258/Asr/2023
Assessment Year: 2012-13

Sh. Dawaraka Dass,
House of Ashok Kumar
M.C. Dashmesh Nagri
Jalalabad (W), 152 024
Punjab

[PAN: ASCPD4496K]
(Appellant)

Vs.

Income Tax Officer,
Ward -2 (4), Abohar

(Respondent)

Appellant by : Sh. Ashwani Kalia, CA
Respondent by : Sh. Rajiv Wadhwa, Sr. DR

Date of Hearing : 04.10.2023
Date of Pronouncement : 30.10.2023

ORDER

Per Dr. M. L. Meena, AM:

This captioned appeal has been filed by the assessee against the order of the Id. CIT(A)/National Faceless Appeal Centre (NFAC), Delhi dated 19.07.2023 in respect of Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:

- “1. That the Id. CIT(A) National Faceless Appeal Centre has erred in confirming the addition of Rs.1485100 made by the AO by invoking the provisions of section 69A.
2. That the Id. CIT(A) National Faceless Appeal Centre has erred in holding that no confirmation letters from persons who had advanced the money to assessee for purchase of immovable property was submitted ignoring the fact that the assessee has filed Affidavit of all such persons duly sworn and notarized, which has more authenticity than the confirmatory letters, before AO as well as CIT(A).
3. That the Id. CIT(A) as well as AO had erred in ignoring the bank statement submitted by persons who had advanced money to assessee justifying the source of payment.
4. That the Id. CIT(A) National Faceless Appeal Centre has erred in summarily rejecting the submissions made by the assessee without allowing any opportunity to the assessee.
5. That the Id. CIT(A) National Faceless Appeal Centre has erred in accepting the order of AO on the ground that opening cash in hand shown in Fund Flow Statement of Rs.364900 was not correct.
6. That the Id. CIT(A) National Faceless Appeal Centre has erred in ignoring the submissions of the assessee that the AO had made order in haste without giving proper opportunity to the assessee.
7. That the order framed by CIT(A) National Faceless Appeal Centre is bad in law and on facts.
8. That the appellant craves leave to add or amend the ground of appeal before the appeal is heard and disposed off.”

3. Apropos ground nos. 4 & 5, the Id. counsel for the assessee has challenged the order of the Id. CIT(A)/NFAC summarily rejecting the appeal

of the assessee by ignoring the submissions made by assessee before the AO without giving proper opportunity of being heard. The counsel has argued that the Id. CIT(A) had erred in holding that no confirmation letters from the persons who had advanced the money to the assessee for purchase of immovable property was submitted, ignoring the fact that the assessee has filed an affidavit of all persons duly sworn and notarized, and confirmation letter before the AO as well as CIT(A) which has more authenticity. He prayed that the matter may be remanded back to the file of the assessing officer to pass *denovo* assessment order after granting adequate opportunity of being heard to the assessee after considering the documentary evidence filed on record including the affidavit of the persons.

4. Per Contra, the learned additional CIT (DR) has no objection to the request of the council of the assessee.

5. We have heard both the sides, perused record, written submission and impugned orders. Admittedly, the appellant has submitted the Affidavits from the persons who have paid the amounts for purchase of plot along with the bank statement. However, the Ld. CIT(A) rejected the same bank statement and affidavits merely stating that it does not justify the creditworthiness/genuineness of the transactions without rebutting the

contention of the appellant by disproving the authenticity of the aforesaid documentary evidence by bringing on record any collaborative material evidence.

6. It is seen that neither the AO nor the Ld. CIT(A) has addressed the relevant issue on merits of the case that the assessee had explained the source of investment in purchase of plot with documentary evidence amounting to of Rs.14,85,100/- and the AO made addition by invoking the provisions of section 69A. The observation of the Ld. CIT(A) in holding that no confirmation letters were filed from persons who had advanced the money to assessee for purchase of immovable property are factually incorrect. In our view, the Affidavit and bank statement of all such persons duly sworn and notarized, were certainly authentic to the confirmatory letters to justify source of income, unless disproved by the AO or CIT(A). Thus, the decision of Id. CIT(A) National Faceless Appeal Centre in summarily rejecting the submissions made by the assessee without allowing any opportunity to the assessee is not justified.

7. Under the fact and circumstances of the case, in the present case, the authorities below ought to have disproved the claim of the assessee by rebutting appellants contention with support of corroborative documentary

evidences on record after granting an adequate opportunity of being heard. The Hon'ble Supreme Court of India in the case of Tin Box Company vs. CIT reported in 249 ITR 216 in which their Lordships of Supreme Court of India observed as under:

“Assessment - Opportunity of being heard - Setting aside of assessment - Assessment order must be made after the assessee has been given reasonable opportunity of setting out his case - Same not done - Fact that the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is assessment order that counts — Assessment order set aside and matter remanded to assessing authority for fresh consideration.”

8. Accordingly, in view of the principles of natural justice, we consider it deem fit to remand back the matter to the file of the Ld. AO to pass *de novo* assessment after considering the written submission and evidences filed on record and may be filed before him during the fresh Assessment Proceedings after granting sufficient opportunity of being heard to the assessee. The AO is directed to issue a Show Cause Notice before passing a reasoned order in accordance with law.

9. Accordingly, the Assessment order is set aside and matter is remanded back to the assessing authority to pass de novo assessment as per law.

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

Order pronounced in the open court on 30.10.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr.PS

Copy of the order forwarded to:

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

True Copy

By Order