

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.5872/Del/2017  
Assessment Year: 2010-11

<b>Vishnu Packing Pvt. Ltd. 12,Golden Park, Shivpuri, New Delhi PAN NO.AACCV0765G</b>	<b>Vs.</b>	<b>ACIT Circle-1 New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. S. Krishnan, CA
Respondent by	Sh. Vivek Vardhan, Sr. DR

Date of hearing:	29/11/2023
Date of Pronouncement:	29/11/2023

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the assessee is preferred against the order of the CIT(A)-1, Noida dated 30.06.2017 pertaining to A.Y.2010-11.

2. The grievance of the assessee read as under :-

*“1. That the order of the Ld. CIT (A) passed u/s 250 of the Income Tax Act, 1961 is bad in law and on facts.*

*2. That the Ld. CIT (A) has exceeded his jurisdiction by directing the Ld. AO to proceed in terms of section 150 of the*

*Income Tax Act, 1961 and reframe assessment order as per law and after complying with the prescribed procedure.*

*3. That the appellant craves leave to add, alter, amend, substitute, delete and modify any or all the grounds of appeal, which are without prejudice to one another, before or at the time of hearing of the appeal.”*

3. In the first round of litigation the quarrel travelled upto the Hon'ble High Court in WP(C) 902/2022 order dated 02.03.2022 set aside the matter and remanded back to the ITAT to justify the matter afresh. The relevant findings of the Hon'ble High Court read as under :-

*“ Learned counsel for the petitioner states that though the petitioner's proxy counsel had prayed for an adjournment and even filed an adjournment application, yet the Tribunal in the impugned order dated 16<sup>th</sup> January, 2020 had recorded the concession of the appellant's proxy counsel to the impugned order being set aside with a direction to the CIT(A) to decide the appeal on merits. He further states that upon an affidavit being filed by the petitioner's proxy counsel that she had given no such consent, the concessional order dated 16<sup>th</sup> January, 2020 was converted into an ex parte order by the Tribunal on the ground that the proxy counsel had no vakalatnama in her favour.*

*He states that the Tribunal by the impugned orders dated 16th January, 2020 and 18th November, 2021 had directed the CIT(A) to decide the appeal on merits. He states that by virtue of the impugned orders, the order passed by the Assessing Officer in the first instance has got revived.*

*On the last date of hearing, Mr.Zoheb Hossain, learned counsel for the respondent had prayed for some time to obtain instructions. Today he states that the Assessing Officer has no objection to the present matter being remanded back to the ITAT for a fresh decision.*

*Consequently, with the consent of learned counsel for the parties, the impugned orders dated 16th January, 2020 and 18 November, 2021 are set aside and the matters are remanded back to the ITAT to decide the matter afresh. The rights and contentions of all the parties are left open*

*With the aforesaid direction, the present writ petition along with pending application stands disposed of.”*

4. Pursuant to the directions of the Hon'ble High Court representatives of both the sides were heard at length. The undisputed fact is that the assessment has been framed without issue of notice u/s.143(2) of the Act which means that the assessment has been framed without assuming jurisdiction making the assessment order null and void.

5. This fact has also been accepted by the first appellate authority. However, the following observations of the CIT(A) are not only unnecessary but also bad in law “in view of the same the impugned assessment order is deleted and the AO is directed to proceed in terms of the provisions of section 150 of the Act and reframe the assessment order in the case of the assessee as per law and after complying with the prescribed procedure”.

6. This finding of the CIT(A) means that the CIT(A) has set aside the assessment the power which he does not have, therefore, the order of the CIT(A) to this extent is bad in law as the CIT(A) has exceeded his jurisdiction. The appeal of the assessee is allowed. The assessment order and the order of the CIT(A) are quashed.

7. Decision announced in the open court on 29.11.2023.

Sd/-

**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

\*NEHA\*

Date:- .11.2023

Copy forwarded to:

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

Sd/-

**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI