

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.338/Del/2023, A.Y.2016-17)  
ITA No.339/Del/2023,(A. Y. 2017-18)**

Madhur Mittal 4/1225/UGF, Gali No. 3, Bhola Nath Nagar, Shahdara, Delhi PAN-BBQPM7590F	Vs.	DCIT, Central Circle 7, Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Anil Bajaj, CA
Respondent by	Sh. Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing	08/01/2024
Date of Pronouncement	10/01/2024

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

Both appeals are filed by the Assessee against the orders of Learned Commissioner of Income Tax (Appeals)-24, New Delhi ["Ld. CIT(A)", for short], dated 15/12/2022 for the Assessment Year 2016-17 & 2017-18 respectively.

2. Since, the issues involved in both appeals are similar, they were heard together and being adjudicated by common order, the only difference is in amount. The Grounds taken in ITA No. 338/Del/2023 are as under :

"1. *That on the facts and circumstances of the case*

*and in law, the order passed by the Ld. Commissioner of Income Tax (Appeal) - 24 [“CIT(A)”] under section 250 of the Act, is bad in law and void ab-initio.*

*2. That the Ld. CIT(A) has erred on facts and in law in upholding the assessment order under 153C read with 143(3) of the Act passed by Ld. Assessing Officer [“Ld. AO”] at an income amounting to INR 38,45,256 against the returned income of INR 6,79,410 after making unwarranted addition amounting to INR 31,65,846 under Section 69A of the Act*

*3. That the Ld. CIT(A) has erred on facts and in law in not providing an opportunity of being heard before passing the order under section 250 of the Act.*

*4. That the Ld. CIT(A) has erred on facts and in law in not holding the notice issued under Section 153C of the Act is invalid being in contravention to Circular Number 24 of 2015 dated 31.12.2015 and the judgement of Hon’ble Apex Court in the case of Calcutta Knitwear.*

*5. That the Ld. CIT(A) has erred on the facts and in law in upholding the assessment for the relevant year on the basis of certain documents which are not related to the appellant and is the personal working of the searched person containing details best known to searched person.*

*6. The Ld. AO has erred on the facts and in law in not providing the mandatory certificate of validity required u/s 65-B (4) of the Indian Evidence Act 1872 without which the entire assessment made on the basis of digital evidence is null and void.*

*7. That the Ld. AO has erred on the facts and in law in not providing the material relied upon for making the assessment Viz. statement of the searched person, assessment orders of the searched person and opportunity of cross examinations of the searched person.*

*8. That the Ld. Addl. CIT has erred on facts and in law in granting the approval under Section 153D of the Act as the approval has been granted without independent application of mind and in haste.*

*9. That the Ld. CIT(A) has erred on the facts and in law in*

*confirming the addition of gross profit at the rate of 2% on the alleged cash transactions ignoring the actual gross profit rate in the bullion trading business and has further erred making the addition of Rs. 6,42,000 under Section 69A of the Act.*

10. *That on the facts and circumstances of the case, the order passed by the Ld. AO is bad in the eye of law as the same was passed in violation of circular no. 19/2019 issued by CBDT which mandates that no order shall be passed without there being Valid Document Identification Number (DIN).*

11. *That the CIT(A) erred in confirming the assessment order framed by Ld. AO who erred in charging interest under section 234B and 234C of the Act.*

12. *The above grounds of appeal are independent of and without prejudice to each other.*

13. *That the Appellant craves to add, alter, amend or withdraw all or any grounds herein or add any further grounds as may be considered necessary either before or during the hearing of these grounds.”*

3. At the outset, the Ld. Counsel for the assessee submitted that the assessee could not appear before the Ld. CIT(A) and participate in the proceedings which resulted in passing the *ex parte* order by the Ld. CIT(A) which are impugned in the present appeals and sought for remanding the issues involved in the appeal to the file of Ld. CIT(A) for fresh adjudication.

4. Ld. DR submitted that ample opportunities have been provided to the assessee, but the assessee has not appeared before the Ld. CIT(A), the Ld. CIT(A) passed the orders on merit, therefore, prayed for dismissal of the appeals filed by the assessee.

5. We have heard the parties and perusal the materials available on record. The Ld. CIT(A) passed *ex-parte* order by dismissing the appeals filed by the assessee. Considering the facts and circumstances of the case and also the submissions made by the parties, the bench is of the opinion that if the issues involved in the appeals are remanded to the file of the Ld. CIT(A) for fresh consideration with the direction to decide the issues involved thereon after hearing the assessee, no prejudice would be caused to any of the parties. Therefore, we remand the appeal to the file of the Ld. CIT(A) with the directions to decide the issue afresh after hearing the assessee.

6. In the result, appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in open Court on 10<sup>th</sup> January, 2024

Sd/-

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

Sd/-

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Dated: 10/01/2024  
*Binita, Sr. PS*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI