

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
and
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 1461/Del/2017
(Assessment Year: 2012-13)

Anish Malik, 210, VPO Risalu, Panipat, Haryana (Appellant) PAN:AMQPM2167C	Vs.	Income Tax Officer, Ward-1, Panipat (Respondent)
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Assessee by :	Shri Nitin Gulati, Adv Shri Vikash Gupta, CA
Revenue by:	Shri Kanv Bali, Sr. DR
Date of Hearing	11/01/2024
Date of pronouncement	23/01/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1461/Del/2017 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals), Karnal [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 26PPT/2015-16 dated 09.01.2017 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 24.04.2015 by the Assessing Officer, ITO, Ward-1, Panipat (hereinafter referred to as 'Id. AO').

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

"1. That the id Commissioner of Income Tax (Appeals) has acted arbitrarily and on premamprion best contrary to principles of natural justice and provision of law as nach the action and finding land thereon stands vitiated and ander is bad in Irw.

2. That On the facts and in the circumstances of the case, the Ld CIT (A) was not cuted in jecting the additional evidence submined during the proceedings which is against the principles of natural patice, contrary to facts and provision of lew as such the action of LA CIT(A) need to be undone.

3. That on the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) is not justified in confirming the action of Ld. AO in making addition of Ra 40,64,600/- on account of investment from undisclosed sources which is against the principles of natural justice, contrary to facts and provision of law as such the action of Ld. CIT(A) need to be undone and the addition made by Ld AO and confirmed by CIT(A) needs to be deleted.

4. That on the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) is not justified in confirming the action of Ld. AO in making addition of Rs.8,50,000/- on account of Income from undisclosed sources which is against the principles of natural justice, contrary to facts and provision of law as such the action of Ld. CIT(A) need to be undone and the addition made by Ld AO and confirmed by CIT(A) needs to be deleted.

5. That on the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) is not justified in confirming the action of Ld. AO in making addition of Rs.64,71,000/- on account of Investment from undisclosed sources which is against the principles of natural justice, contrary to facts and provision of law as such the action of Ld. CIT(A) need to be undone and the addition made by Ld AO and confirmed by CIT(A) needs to be deleted."

3. We have heard the rival submissions and perused the material available on record. The assessee is an individual, deriving business income from milk diary. The return of income for AY 2012-13 was filed on 29.09.2012 declaring taxable income of Rs. 1,74,550/-. The return was selected for scrutiny and the Id AO started examining each and every claim made by the assessee in the return of income. The Id AO observed that the assessee had shown opening stock as on 01.04.2011 of Rs. 66,31,500/- in the profit and loss account whereas, the closing stock as on 31.03.2011 was Rs. 1,60,500/-. The Id AO asked the assessee to explain above noted discrepancy. In addition, a sum of Rs. 8,50,000/- was introduced as fresh capital contribution in the proprietor capital account. The Id AO asked source for the same. The Id AO observed that there was complete non cooperation from the side of the assessee by not furnishing the requisite details in the assessment proceedings. Accordingly, he proceeded to make the following additions after issuing show cause notice to the assessee:-

- a. Difference on account of opening stock- Rs. 64,71,000 (Rs. 66,31,500-Rs. 1,60,500/-)
- b. Non-verifiable purchase bills- Rs. 40,64,600/-
- c. Addition towards fresh capital introduction- Rs. 8,50,000/-

4. The assessee pleaded that he had furnished the evidences before the Id AO itself vide letter dated 24.12.2014 which are enclosed in pages 35 to 36 of the PB and further vide letter dated 11.02.2015 which is enclosed in page 5 of the PB. Before the Id CIT(A), the assessee filed all the invoices which are also enclosed in pages 37-61 of the PB in the form of additional evidences and the Id CIT(A) rejected the admission of those additional evidences as it was not supported by a petition in terms of Rule 46A of the Income Tax Rules. It was pleaded before the Id CIT(A) by the assessee that sufficient details were indeed filed before the Id AO but the same were not appreciated by the Id AO. The Id AR before us filed an undertaking that the assessee would cooperate with the assessment proceedings and prayed for one last opportunity to be given to furnish all the relevant details that are required for the purpose of adjudication of the disputes before us and requested for setting aside of this appeal to the Id. AO.

5. Per contra, the Id Sr. DR vehemently objected to setting aside of this appeal to the Id. AO as sufficient opportunities were indeed given to the assessee by the Id AO and additional evidences were filed by the assessee before the Id CIT(A) in improper form and hence, the Id CIT(A) was duly justified in not admitting the additional evidences also.

6. We have given careful consideration to the arguments advanced by both the sides and by considering the totality of facts and circumstances of the case, we find that one last opportunity should be given to the assessee to present its case before the Id AO. Hence, we restore this appeal to the file of the Id AO for de novo adjudication in accordance with law qua the issues in dispute before us. The assessee is at liberty to furnish fresh evidences, if any, in support of his contentions. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 23/01/2024.

-Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 23/01/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi