

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO.183/Chd/2024
निर्धारण वर्ष / Assessment Year : 2013-14

Singla Builders and Promoters Limited SCO-146-147, Sector 43B, Chandigarh	बनाम	The Dy. CIT Central Circle-1 Tax, Chandigarh
स्थायी लेखा सं./PAN NO: AAOC6503M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Parikshit Aggarwal, C.A
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT, D.R

सुनवाई की तारीख/Date of Hearing : 05/03/2024
उद्घोषणा की तारीख/Date of Pronouncement : 11/03/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-3, Gurgaon dt. 19/02/2024 pertaining to Assessment Year 2018-19.

2. In the present appeal, the assessee has raised the following revised grounds of appeal:

1. That on the facts, circumstances and legal position of the case, Worthy CIT(A), in Appeal No. 10466/CIT(A)-3/GGN/2012-13, has erred in passing order dtd. 19.02.24 in contravention of provisions of S. 250 of the Income Tax Act, 1961 (hereinafter referred to as "Act").

2. That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO of passing asst. order by illegally assuming/acquiring jurisdiction u/s 153A and more-so when no incriminating material qua this year was found in search u/s 132 on assessee.

3. That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO in initiating proceedings u/s 153A even when the jurisdictional condition prescribed in clause (a) under 4th proviso to s. 153A(1), being finding of escaped income represented in the form of asset, was never discovered during search.

4. That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO of passing asstt order beyond the limitation period prescribed u/s 153B since the reference made u/s 142A to the DVO for estimation of construction expense of the appellant was illegal.

5. That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO of passing asstt order which had been passed on the basis of illegal transfer order u/s 127.

6. That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the addition made by Ld. AO of Rs. 75,44,23,825/- u/s 69B on account of alleged investment in construction of real estate projects on the basis of report of DVO even when:

6.1 The report of the DVO was never served on the assessee despite mandatory requirement of s. 142A;

6.2 The report of the DVO was time barred and hence no addition on the basis thereof could have been made;

6.3 The report of the DVO is absolutely incorrect and has been framed by him without considering the ground realities, documents furnished and produced before him;

6.4 The DVO has issued the report without confronting the issues and without affording reasonable opportunity of being heard;

6.5 In respect of construction expense of a builder, the addition could not have been made u/s 69B on the basis of report of DVO.

7. That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the addition of Rs. 1,08,00,000/- made u/s 69A by the Ld. AO on account of alleged unaccounted cash receipts even when:

7.1 No such cash was received by the assessee during the year;

7.2 The basis statement of Mr. Amit Goyal (accountant) stood subsequently retracted;

7.3 Mr. Amit Goyal was never produced for cross-examination despite specific written demand made by the appellant;

7.4 The alleged material in the form of print outs of cash receipt excel sheets never existed and was got prepared by search team from Mr. Amit Goyal by exerting undue pressure on him and this fact has been explained by Mr. Amit Goyal in his retraction letter and most importantly, even during examination of digital records during assessment, even the Ld. AO could not find the soft copy of these printouts in this entire soft data seized from assessee group;

7.5 No corroborative material was found by the department during search or even till conclusion of impugned assessment about receipt of alleged unaccounted cash from customers;

7.6 The assessee furnished enough evidences (including affidavits of huge number of customers) and explanation during assessment to establish and

corroborate that the amount disclosed in books as sale is the real transaction and the alleged unaccounted cash never existed.

8. That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO in acquiring jurisdiction u/s 153A as such order is invalid and unlawful since the approval u/s 153D was without due application of mind and was merely ritualistic.

9. That on facts, circumstances and legal position of the case Worthy CIT(A) has erred in confirming the action of Ld. AO of passing assessment order without having DIN.

10. That on facts, circumstances and legal position of the case, the order passed by Ld. AO and then by Worthy CIT(A) deserves to be quashed since the same have been passed without affording reasonable opportunity of being heard.

11. That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.

3. The matter was listed for hearing the application filed by the assessee seeking early hearing in the matter. After considering the submissions of both the parties, the early hearing was granted.

4. During the course of hearing, the Ld. AR submitted that the present appeal has been filed by the appellant against the *ex-parte* order passed by the Ld. CIT(A), Gurgaon dt. 19/02/202 in extreme haste and without affording reasonable opportunity of being heard to the assessee.

4.1 It was submitted that the appellant had last sought adjournment vide application dated 12.02.2024 and the same was informed by the office of Ld. CIT(A) to be 26.02.2024. However, to our shock and surprise, we found that in between, the Ld. CIT(A) has passed the impugned order on 19.02.2024. Even the impugned order records that the appellant had sought adjournment, but the order nowhere says that the said adjournment was denied.

4.2 It was submitted that the demand involved in this appeal is in excess of Rs. 50 crores on which the stay application was also filed before the Ld. PCIT (Central), Gurgaon and also before the Ld. CIT(A). The same are pending

consideration before both the authorities. Even the stay petition of the appellant is pending before the Ld. CIT(A) who has not at all taken cognizance of these petitions while passing the impugned order.

4.3 It was further submitted that the assessee group was searched on 21.01.2021 and thereafter assessments were framed. More than 30 appeals of the appellant group emanated from this assessment. The Ld. CIT(A), in extreme hurry and haste and without affording reasonable opportunity to the appellant, has dismissed 3 appeals ex-parte and these are appeals where demands are in excess of Rs. 50 crores. It seems that to meet the target of these category of appeals that these 3 appeals of the appellant were hurriedly disposed off ex-parte. The other 35 appeals, involving identical issues as are in these 3 appeals, involving demands less than Rs. 50 crores each are still pending before the Ld. CIT(A). We were appearing for all these appeals but to our surprise the 3 appeals have been dismissed ex-parte.

4.4 It was submitted that the reason for the assessee seeking adjournment before the Ld. CIT(A) was that the major portion of addition involved is on the basis of report of DVO. The report of DVO is totally flawed since it contains absolutely incorrect facts and figures and most of them are not at all reconciling with our data. It seems that data of some other party has been taken in our reports. For this, during the appellate proceedings u/s 250, we had moved application before the AO as well as before the DVO to provide the back material on the basis of which these reports have been framed. The fact that we are awaiting these details from these authorities was made known to the Ld. CIT(A) also through our letter. Even the DVO had replied on this on 19.02.2024 which was received by us on 21.02.2024. However, still the Ld. CIT(A) has passed the impugned appellate order ex-parte.

4.5 It is further submitted that the appeals of the assessee group were filed in Dec, 2022 before the Ld. CIT(A) and the 3 appeals were fixed for hearing by Ld. CIT(A) for the 1st time on 26.07.2023. The other appeals involving same issues have not yet been fixed even once by Ld. CIT(A).

4.6 It was further submitted that the decision of Ld. CIT(A) is totally vague since he has not at all considered the side of the assessee and therefore, it is likely to be remanded back on majority of the issues. Then there has been violation of principles of natural justice at the end of Ld. CIT(A) as well as of the Ld. AO. It was submitted that now due to passing of this order, there is extreme pressure of recovery of demand and also of the penalty proceedings which had so far been kept in abeyance. The assessee group is not in such a position that it will be able to face that kind of pressure and the exertion of this pressure will lead to closing down the business.

4.7 In view of above facts and circumstances, it was submitted that the matter may be set-aside to the file of the Ld CIT(A) to decide the same on merits after providing reasonable opportunity to the assessee. It was submitted that they will not seek unnecessary adjournment(s) and will fully co-operate in the early disposal of the appeal.

5. Per contra, the Ld. CIT DR submitted that during the appellate proceedings, inspite of giving various opportunities to the assessee to substantiate the grounds of appeal, repeated adjournment were sought and thereafter left with no option, the Ld. CIT(A) going ahead proceeded to dispose of the grounds of appeal basis material available on the record.

5.1 At the same time, he did not raise any serious objection where the matter is set aside to the file of the Ld. CIT(A) to decide the same afresh after providing reasonable opportunity to the assessee. It was submitted that the assessee be directed to attend to the appellate proceedings and should be directed to

cooperate in timely completion of the proceedings as so called for by the Ld. CIT(A).

6. We have heard the rival contentions and purused the material available on record. Admittedly, the impugned order has been passed *ex-parte* qua the assessee. Keeping in view the principles of natural justice, we believe that the assessee deserve one more opportunity to represent its case and we accordingly deem it appropriate to set aside the matter to the file of Ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee. All the contentions raised by the Id AR on behalf of the assessee are left open and the assessee is at liberty to raise the same as advised and the Id CIT(A) shall consider and decide the same as per law, alongwith any other plea available to the assessee under the law, if the assessee wishes to raise such a plea before the Ld. CIT(A).

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

Order pronounced in the open Court on 11/03/2024

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 11/03/2024

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar