

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “A” : NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

(Through Hybrid Mode)

**ITA No. 6775/DEL/2018 (Quantum appeal)
(A.Y: 2013-14)**

&

**ITA No. 873/DEL/2020 [penalty appeal u/s 271(1)(c)]
(A.Y: 2013-14)**

Sh. Bijender Singh S/o Sh. Nafe Singh, VPO Garhi Ghajju, tehsil Samalkha, Distt. Panipat. PAN- BDSPK2976F	<u>Vs</u>	Income Tax Officer, Ward-1, Panipat.
APPELLANT		RESPONDENT
Assessee represented by	Sh. Satyam aneja, Adv.	
Department represented by	Sh. Kanv BaLI, Sr. DR	
Date of hearing	13.02.2024	
Date of pronouncement	28.03.2024	

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has come in quantum appeal against the order dated 30.07.2018 passed by the Commissioner of Income Tax (Appeals), Karnal (hereinafter referred as “learned First Appellate Authority” or in short “FAA”) in Appeal no. IT/20/PPT/2016-17, for the assessment year 2013-14, arising out of the assessment order dated 30.03/2016 u/s 147/143(2) of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the Income Tax Officer, Ward-1, Panipat

(hereinafter referred in short as “Ld. AO”). The assessee has also come in penalty appeal against CIT(A)’s order dated 26.09.2018 arising out of the penalty order dated 29.09.2016 u/s 271(1)(c) of the Act, passed by the ITO, Ward-3, Panipat. Both the appeals were taken up for hearing together and are being disposed of by this common order for the sake of convenience.

2. Heard and perused the record.

3. At the time of hearing learned AR has stressed on the fact that in the assessment order the learned AO has mentioned facts which are not connected with either nature of business of the assessee or the figures coming out from the financials and that this issue was raised before the learned CIT(A) but he has not taken into account the discrepancies pointed out and sustained the additions.

4. Learned DR has, however, supported the order of the learned CIT(A) submitting that in the grounds raised before learned CIT(A) assessee had merely challenged the figures of addition as mentioned by the learned AO.

5. As we appreciate matter before us in the light of submission of Ld. AR, it comes up from the statement of facts that assessee is an individual, dealing in textile goods, dying, fabrication etc. under the name and style of M/s Harsh Textile, tehsil Samalkha, district Panipat. The assessee maintains books of account and filed return of income at Rs. 3,19,590/-. However, in the assessment order learned AO has mentioned that the assessee derives income from share broking business.

5.1 Then, it comes up that during the scrutiny assessment assessee had filed duly audited balance-sheet and other information, but learned AO has not examined the same and by observing that books of a/c are not produced with vouchers the assessment order u/s 144 of the Act was passed.

5.2 It comes up that learned AO has made an addition treating the gross profit percentage at 22% as against 18.60% shown by the assessee. While the assessee has shown gross profit at Rs. 9,65,903/-, the learned AO has taken gross profit at Rs. 14,20,081/-. How this figure was arrived is not coming from the assessment order or from the financials filed before us.

5.3 Similarly, assessee's expenses have been shown to be Rs. 12,50,000/- in P&L a/c as per the assessment order. While we examine the copy of P&L a/c made available at page 10 of the paper book, the figure is not reconciled as assessee's expenses under different heads as mentioned are far more.

5.1 The fact that learned AO has picked correct figures of sundry creditors of Rs. 5,22,614/- and unsecured loan of Rs. 4,55,800/-, it is established that financials were available with the learned AO, a with regard to alleged cash deposit of Rs. 10,60,000/- additional evidences were filed before learned CIT(A) and remand report was called on the plea of assessee that the same were out of sale proceeds of business dealings, how could arbitrarily without examining the financials the learned CIT(A) has sustained the addition.

5.3 We are of the considered view that learned tax authorities below seems to have completely ignored the plea of assessee on every count and on their own have also erred in not taking the correct figures for arriving at the additions.

5.4 Consequently, we are inclined to quash the assessment order with liberty of passing a fresh order in accordance as per law and taking into consideration relevant information made available by the assessee and, if required, AO will be at liberty to call for further information from the assessee to decide the issue afresh.

6. Since in appeal ITA no. 6775/Del/2018 arising out of the merits or additions, the assessment order has been quashed, the consequent penalty order dated 26.09.2016, levying penalty u/s 271(1)(c) of the Act, is also quashed.

7. Resultantly Both the appeals of the assessee are allowed.

Order pronounced in open court on 28.03.2024.

Sd/-
(G.S. PANNU)
VICE PRESIDENT
MP

Copy forwarded to:

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

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI