

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI**

**BEFORE**

**SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3822/Del/2023  
Asstt. Year: 2015-16

Sarita Gupta, 9/320 Misarmurar, Saharanpur, UP, Saharanpur, Uttar Pradesh 247001. PAN AKXPG8556E	Vs.	ITO Ward 3(3)(5) Saharanpur.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Vivek Bansal, Advocate Shri Vishal Chechi, Advocate
Department by:	Shri Anuj Garg, Sr. DR
Date of Hearing:	03.04.2024
Date of pronouncement:	10.04.2024

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 03.11.2023 of the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi ("**CIT(A)**") pertaining to the Assessment Year ("**AY**") 2015-16.

2. The assessee has raised the following grounds:-

- “1. *That under the facts and circumstances of the case, Ld. CIT(A) of National Faceless Appeal Centre (NFAC), Delhi has erred in law as much as in fact in sustaining the additions of Rs. 10,19,166/- and Rs. 1,01,33,862/- made by the AO on account of alleged unexplained funds contributed as capital to the LLP as discussed in para 09 and on account of alleged Bogus and fictitious Liability as claimed to have taken over from the LLP as discussed para 13 respectively, as per ex-parte order dated 03-11-2023 generated as per DIN ITBA/NFAC/250/2023-24/1057673366(1). The additions upheld are liable to be deleted in the facts and circumstances of the case.*
2. *That under the facts and circumstances of the case, Ld. CIT(A) of NFAC has failed to appreciate that during the period of October 2023 the assessee was prevented by sufficient cause for not responding to the notice issued for hearing of the appeal, therefore, could not file reply or written submissions to support the grounds of appeal.*
3. *That under the facts and circumstances of the case, Ld. CIT(A) of NFAC while sustaining the addition, has failed to appreciate that the reassessment proceeding initiated in the case of the assessee are invalid in the eyes of law as the reasons recorded for reopening the case were without there being any tangible material and there was no material on record for drawing a conclusion that any income has escaped from assessment in the hands of the assessee as there was sufficient material on record to support the investment of Rs. 10,19,166/- in the LLP by the assessee and so far as it relates to another sum of Rs. 1,01,33,862/- there was no material on record to show that any such amount was either contributed or paid by the assessee in discharge of the liability of Rs. 7,50,00,000/- in the hands of LLP which was an outstanding sum in the books of LLP which could not in any circumstances be presumed to be discharged just to draw an inference that such liability has been discharged. There is no iota of evidence to draw such inference. Therefore, the reasons recorded are only reasons to suspect and not reasons to believe as per statutory requirement.*
4. *That under the facts and circumstances of the case, the impugned order passed by the Ld. CIT(A) of NFAC is bad in law on account of disposal of appeal by way of a non-speaking order and without deciding the grounds of appeal on their merits.*
5. *That under the facts and circumstances of the case, Ld. CIT(A) of NFAC while sustaining the addition, has failed to appreciate that otherwise the abovementioned two additions of Rs. 10,19,166/- and Rs. 1,01,33,862/- are not sustainable on merits even because the amount invested by the assessee in LLP of a sum of Rs. 10,19,166/- was supported by evidence and amount of Rs. 1,01,33,862/- was merely an outstanding liability in the hands of the LLP as at the end of the relevant previous year in the balance sheet of the LLP and there is no material on record to show that the said liability was discharged by the LLP or by the assessee during the FY 2014-15 relevant to AY 2015-16. The additions are liable to be deleted on merits.*
6. *That under the facts and circumstances of the case, Ld. CIT(A) of NFAC while sustaining the addition of Rs. 10,19,166/-, has failed to appreciate that addition otherwise is not sustainable as the same has been added by the AO stating "Thus in the wake of above*

*narratives, the cash capital of Rs. 10,19,166/- is found to be an unexplained income being given away to the LLP for capital contribution. Accordingly, an addition of Rs. 10,19,166/- is made to the income of the assessee". and no particular section of the Income Tax Act, 1961 has been invoked for making the addition either while making addition or in any of the notices proposing for making such addition.*

7. *That under the facts and circumstances of the case, Ld. CIT(A) of NFAC while sustaining the addition of Rs. 1,01,33,862/-, has failed to appreciate that addition otherwise is not sustainable as the same has been added by the AO stating "Thus, the liability of Rs. 10133862/- being of fictitious nature as per above discussions, is liable to be considered as income of the assessee" and no particular section of the Income Tax Act, 1961 has been invoked for making the addition either while making addition or in any of the notices proposing for making such addition.*
8. *That under the facts and circumstances of the case learned AO has erred in law as much as in facts in initiating penalty proceedings u/s 271(1)(c) of the Act, the issuance of penalty notice may be held invalid.*
9. *That under the facts and circumstances of the case and in law the levy of interest u/s 234A, 234B and 234C of the Act is contrary to law and may be deleted.*
10. *That each of the above grounds is independent and is without prejudice to each other."*

3. Briefly stated, the assessee is partner along with six others in M/s. Shree Jee Developtech, LLP Saharanpur. For AY 2015-16, she filed her return on 05.10.2015 declaring income of Rs. 3,51,250/-. Since the said income was not commensurate to the contributed cash funds of Rs. 10,19,166/- to the LLP and also the capital contribution by taking over LLP's liability of Rs. 1,01,33,862/- equivalent to her share in the LLP, her case was re-opened by issue of notice under section 148 of the Income Tax, Act, 1961 (**the "Act"**) on 09.03.2018 with prior approval of Ld. JCIT. During the course of re-assessment proceedings, the assessee filed detailed reply comprising of a ledger showing credit balance of Rs. 1,11,53,028/- of the assessee partner in the books of LLP, copy of corroboration agreement dated 02.12.2014 between M/s. Sony Realtors Private Limited and the LLP and copy of her own statement on oath recorded on 07.12.2017. The Ld. Assessing Officer (**"AO"**) completed the re-assessment determining the total income of the assessee at Rs. 1,15,04,280/- on 24.12.2018 under section 143(3) r.w. section 147 of the Act including therein addition of Rs.

10,19,166/- being unexplained funds contributed as capital to the LLP and addition of Rs. 1,01,33,862/- being bogus and fictitious liability as claimed to have taken over from the LLP.

4. Aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A). The notices of hearing issued by the Ld. CIT(A) on 29.12.2020, 15.12.2021, 06.12.2022, 16.05.2023, 26.09.2023 and 20.10.2023 remained uncomplished with. The Ld. CIT(A), therefore, declined to interfere with the order of the Ld. AO and dismissed the appeal of the assessee against which the assessee is in appeal before the Tribunal.

5. We have heard the Ld. Representative of the parties and perused the records. It is submitted by the Ld. AR that there was sufficient cause for failure to comply the notice(s) as half of the period is covered by COVID and the lady assessee was unaware of the notices which were not received by her. The Ld. AR further submitted that the Ld. CIT(A) has passed a non-speaking order and did not decide the issue on merits.

6. The Ld. DR supported the order of the Ld. CIT(A).

7. On careful consideration of the facts and circumstances of the case, we are of the view that it is a fit case to send the matter back and restore it to the file of the Ld. CIT(A). Needless to state that sub-section (6) of section 250 of the Act mandates that the Ld. CIT(A) shall state the points for determination, the decision thereon and the reason for the decision. The impugned order of the Ld. CIT(A) is not in consonance with the said mandate of law. We, therefore set aside the order of the Ld. CIT(A) with a direction to him to pass a speaking order on merits after allowing reasonable opportunity to the assessee of being heard. We order accordingly.

9. In the result, appeal of the assessee is treated as allowed for statistical purposes.

**Order pronounced in the open court on 10<sup>th</sup> April, 2024.**

**sd/-  
(G.S. PANNU)  
VICE PRESIDENT**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 10/04/2024

**Veena**

Copy forwarded to -

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

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	