

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

**BEFORE,  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.883/Del/2024  
(ASSESSMENT YEAR 2011-12)**

Gagandeep Singh House No.751 B/1, Bhiwani Stand Rohtak Haryana-124001 PAN-BPGPS7977L	Vs.	Income Tax Officer Ward-2, Rohtak
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Mayank Patwari, Adv.
Respondent by	Shri Om Prakash, Sr. DR

Date of Hearing	08/05/2024
Date of Pronouncement	15/05/2024

**ORDER**

**PER S.RIFAUR RAHMAN, AM:**

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-29, New Delhi ["Ld. CIT(A)", for short], dated 19/01/2024 for Assessment Year 2011-12

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

“1. On the facts and circumstances of the case, the order passed by Ld. CIT(A) is bad both in eyes of law and on facts.

2. That the Ld. CIT(A) has erred in law and on facts in ignoring that the jurisdiction of the Ld. AO for re-opening the assessment was invalid as the transaction pertaining to alleged bogus LTCG relate to AY 2010-11.

3. That the Ld. CIT(A) has erred in law and on facts by confirming the addition made by the Ld. AO by merely reproducing the assessment order which has only evaluated the scrip purchased and not the facts of the case.

4. That the Ld. CIT(A) as well as the Ld. AO have erred in law and on facts by ignoring the fact that the purchase as well as the sale occurred in period not relevant to the FY 2010-11.

5. That the Ld. CIT(A) has erred in law and on facts by directing the Ld. AO to make the addition u/s 68 of the Act in order to rectify the error of the Ld. AO in appreciating the fact that there was no LTCG earned by the assessee.

6. That the Ld. CIT(A) has erred in law and on facts that the reopening was based on borrowed satisfaction and without application of mind.

7. That the Ld. CIT(A) has erred in law and on facts by confirming the addition of Rs. 49,12,000/-made by the Ld. AO under section 69 of the Act without any reasonable basis.”

**3.** At the outset, the Ld. AR briefly submitted the facts in this case and agreed that Assessing Officer sent several notices, but assessee could not make submission before him, therefore, proceeded to make the assessment u/s 143(3) r. w. section 147 of the Act, 1961 (‘the Act’ for short). Further, he agreed that several opportunities were given by the Ld. CIT(A) as well and assessee

could not represent his case due to non-receipt of the notices, however, he submitted that the Ld. CIT(A) has proceeded to dismiss the appeal filed by the assessee *in limine* without deciding the issue on merits. He prayed that this issue may be remitted back to file of Ld. CIT(A) for proper adjudication.

**4.** On the other hand, Ld. DR relied on the order of the lower authorities and submitted that assessee has not utilized the opportunity provided by Assessing Officer as well as Ld. CIT(A). However, he agreed that the order passed by Ld. CIT(A) is *ex-parte* order.

**5.** Considered the rival submissions and material placed on record. On a perusal of the assessment order and First Appellate Authority order, we find that even though the Assessing Officer and Ld. CIT(A) provided opportunity on several occasions, assessee could not appear nor complied to the notices issued. We observed that Ld. CIT(A) dismissed the appeal filed by the assessee based on the information available on record.

6. Considering the totality of facts and keeping in view the additions/disallowance made by the Assessing Officer, we are of the opinion that assessee should be given one more opportunity of being heard. Accordingly, in the interest of justice, we are of the view that this matter should go back to the file of the Assessing Officer for denovo verification and assessment. Assessee shall cooperate with the proceedings before the Assessing Officer without taking unnecessary adjournments. Needless to say that the Assessing Officer shall give adequate opportunity of being heard to the assessee. Thus, this appeal is restored to the file of the Assessing Officer accordingly.

7. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 15<sup>th</sup> May, 2024.

Sd/-

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

Dated: 15/05/2024  
Pk/sps

Sd/-

**(S.RIFAUH RAHMAN)  
ACCOUNTANT MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI