

आयकर अपीलिय अधिकरण
दिल्ली पीठ " जी ", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

आअसं. 2229/दिल्ली/2023 (नि. व. 2011-12)
ITA NO.2229/DEL/2023 (A.Y.2011-12)

M/s Shubh Resources P. Ltd.,
C-394, Saraswati Vihar, Pitampura,
New Delhi 110034

PAN: AAJCS-6389-Q

..... अपीलार्थी/ Appellant

बनाम Vs.

Income Tax Officer,
Ward 23(3), New Delhi

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Abhinav Jain, Advocate
प्रतिवादीद्वारा/ Respondent by : Shri Dharm Veer Singh, CIT(DR)
सुनवाई की तिथि/ Date of hearing : 23/04/2024
घोषणा की तिथि/ Date of pronouncement : 28/05/2024

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 27.06.2023, for the Assessment Year 2011-12.

2. The assessee has raised multiple grounds of appeal *inter alia* challenging validity of reassessment proceedings u/s. 147 r.w.s 148 of the Income Tax Act, 1961 [in short 'the Act'].

3. Shri Abhinav Jain appearing on behalf of the assessee submitted at the outset that he is not pressing ground no. 3 of appeal challenging validity of reopening of assessment. He submitted that short prayer of the assessee is that the AO and the CIT(A) have failed to consider the documents furnished by the assessee during the course of assessment proceedings. He further submitted that various documents were seized by Directorate of Revenue Intelligence (DRI) in a search conducted in February to April 2011. Therefore, the assessee could not produce some of the relevant documents before the AO and CIT(A). He further stated that the AO has made addition placing heavy reliance on the statement of one Shri Madhusudhan Satyanarayan. The statement of aforesaid person was recorded at the back of the assessee. The assessee made prayer before the AO to provide a copy of statement of Madhusudhan Satyanarayan. Neither the statement of Madhusudhan Satyanarayan was provided to the assessee, nor an opportunity to cross-examine Madhusudhan Satyanarayan was afforded to the assessee. He prayed that the appeal may be restored to AO for fresh assessment after considering the documents placed on record by the assessee and further documents that the assessee would place on record after the same are released by DRI.

4. Shri Dharm Veer Singh, representing the Department pointed that the CIT(A) had granted multiple opportunities to the assessee on various dates spreading over two years. However, the assessee failed to respond to the notices issued by the CIT(A). The Id. DR submitted that the assessee has already been granted sufficient opportunity by the CIT(A), hence, no useful purpose would be served in remanding the case back to the AO.

5. Rebutting the arguments made on behalf of the Department. The Id. Counsel for the assessee submitted that since necessary documents were in custody of DRI, therefore, the assessee could not appear before the CIT(A).

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. A perusal of the impugned order shows that the same has been passed in an ex-parte proceedings. The contention of the assessee is that the assessment for AY 2011-12 has been reopened on the basis of statement of one Madhusudhan Satyanarayan. The said statement was not provided to the assessee nor opportunity of cross-examination was afforded to the assessee. Taking into consideration entire facts of the case, we deem it appropriate to restore this appeal back to the file of AO for *denovo* assessment, after affording reasonable opportunity of hearing/making submissions to the assessee, in accordance with law. The AO shall provide statement of Madhusudhan Satyanarayan to the assessee and an effective opportunities of cross-examination to the assessee, if the assessee makes such an application. The assessee may furnish relevant documents before the AO to support its contentions. The AO before passing assessment order shall consider the documents furnished by the assessee. In the result, impugned order is set aside and appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on Tuesday the 28th day of May, 2024.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली / Delhi, दिनांक/Dated 28/05/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar) ITAT, DELHI