

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

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

आअसं . 2888/दिल्ली/2023 (नि . व. 2012-13)  
ITA NO.2888/DEL/2023 (A.Y.2012-13)

Parkash Sachdeva,  
S-286, Second Floor, Greater Kailash II,  
Delhi 110048

PAN: AAXPS-6506-N

..... अपीलार्थी / Appellant

बनाम Vs.

Assistant Commissioner of Income Tax,  
Central Circle 18, Jhandewalan,  
New Delhi 110001

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा / Appellant by : Shri S.P Gogia, Advocate  
प्रतिवादीद्वारा / Respondent by : Shri P.N Barnwal, CIT (DR)  
सुनवाई की तिथि / Date of hearing : 26/06/2024  
घोषणा की तिथि / Date of pronouncement : 28/06/2024

आदेश / ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-27, New Delhi (hereinafter referred to as 'the CIT(A)'), dated 17.08.2023, for assessment year 2012-13.

2. Shri P.N Barnwal, representing the Department submitted at the outset that this appeal by the assessee is not maintainable as no addition has been made by the Assessing Officer (AO) in assessment order. The CIT(A) has dismissed

appeal of the assessee observing that no addition has been made by the Assessing Officer (AO) in assessment order dated 30.12.2019 passed u/s. 153A r.w.s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), against which the appeal was filed before the CIT(A).

3. Shri S.P Gogia, appearing on behalf of the assessee submitted that assessment u/s. 143(3) of the Act was made by AO vide order dated 29.01.2015. The AO made certain additions in the aforesaid assessment order. The assessee carried the issue in appeal before the CIT(A). The CIT(A) confirmed the additions, hence, the assessee filed second appeal before the Tribunal in ITA No. 2991/Del/2017. The Tribunal allowed the appeal of assessee for statistical purposes vide order dated 10.03.2023. He placed on record copy of the said Tribunal order. He further submitted that a search & seizure action u/s. 132 of the Act was carried out on assessee on 21.08.2017. The Assessing Officer vide assessment order dated 30.12.2019 passed u/s. 143(3) r.w.s. 153A of the Act, has made the same vary additions, as were made in assessment order dated 29.01.2015 passed u/s. 143(3) of the Act. Therefore, the assessee is in appeal against the assessment order passed in pursuance to search proceedings.

4. We have heard the submissions made by rival sides and have examined the order of authorities below. It is an undisputed fact that in assessment proceedings u/s. 143(3) of the Act, the AO vide order dated 29.01.2015 had assessed total income of assessee at Rs. 1,49,78,970/-, after making addition of Rs. 77,89,711/- on account of short disclosure of commission income. The assessee carried the issue to the Tribunal. The Coordinate Bench in ITA No.2991/Del/2017 (supra) after considering the facts, restored the issue back to AO by observing as under:-

*“3. When the matter was called for hearing, the Id. counsel for the assessee submitted that an addition of Rs.77,89,711/- was made in the hands of the assessee on the ground that certain commissions has been allegedly earned by the assessee to the tune of Rs.97,12,121/- from one M/s. Laxmi Remote (India) Pvt. Ltd. and a TDS of Rs.9,71,212/- has been deducted and credited in favour of assessee as reflected in Annual Information Report (AIR) reported in Form 26AS maintained by the Department for this purpose. It is on this basis of the TDS entries reflected in form 26AS, the Assessing Officer made the impugned additions on account of suppression of commission receipts. In this regard, the Id. counsel submitted that he has not received any commission whatsoever from the said company and the financial statements of the company itself also shows commission payment of only Rs.11,08,708/- and even this amount also has not been paid to the assessee. It was pointed out that the mistake is continuing and could not be rectified because the deductor / payer is not in a position to revise the TDS return in the absence of any module available in the IT software for doing so. The Id. counsel thus sought for suitable relief in the matter.*

*4. The Id. DR for the Revenue contended that the action of the Assessing Officer is justified having regard to the TDS deducted in the name of the assessee which has also been enjoyed by the assessee and thus the onus is on the assessee to dispute the contents of Form 26AS.*

*5. We have considered the rival submissions. The additions on account of unaccounted commission receipts is under challenge. It is the case of the assessee that it has not received any commission from M/s. Laxmi Remote (India) Pvt. Ltd. as wrongly reflected in the AIR and consequently no income is accrued or arisen in the hands of the assessee whatsoever. Having regard to unequivocal assertions made on behalf of the assessee, we deem it expedient to restore the issue back to the file of the Assessing Officer for suitable verification. It shall be open to the Assessing Officer to conduct suitable enquiry and verifications of the averments made by the assessee from the deductor and take the issue to logical conclusion. Where it is found that no commission has been paid by the deductor to the assessee, the impugned additions on account of suppressed commission would not be justified. The Assessing Officer shall also examine the taxability of TDS credit, if availed, by the assessee and determine the taxability of TDS receipts in accordance with law. With these directions, the issue is remitted back to the file of the Assessing Officer for fresh decision in accordance with law and after giving commensurate opportunity to assessee. The assessee shall dutifully assist the Assessing Officer for determination of the issue without any demur. With these observations, the issue is restored to the file of the Assessing Officer.”*

5. After completion of assessment u/s. 143(3) of the Act, a search & seizure operation u/s. 132 of the Act was carried out upon the assessee on 21.08.2017. The AO vide assessment order dated 30.12.2019 passed 143(3) r.w.s. 153A of the

Act, assessed the total income of assessee at Rs. 1,49,78,970/-, as was assessed u/s. 143(3) of the Act. It is relevant to mention here that no addition consequent to search was made by AO on any incriminating material. The assessee still filed an appeal before the CIT(A) against such assessment order. The CIT(A) vide impugned order dismissed the appeal of assessee observing as under:-

*“5. It is observed that the Id. AO has not made any addition in the assessment order u/s. 153A r.w.s. 143(3) of the Income Tax Act, 1961 dated 30.12.2019 against which this appeal has been filed. Whatever additions are made in the case of the appellant, these were made under the scrutiny assessment u/s. 143(3) of the I.T Act.”*

6. We are of consider view that this appeal filed by the assessee is misconceived. Since no addition has been made by the AO in assessment proceedings u/s. 153A r.w.s. 143(3) of the Act, no appeal against said order is maintainable. As far as apprehension of the assessee that the addition made u/s. 143(3) of the order has been reconfirmed in the assessment made u/s. 153A r.w.s 143(3) of the Act and may sustain even though the Tribunal has restored the issue in proceedings u/s. 143(3) of the Act to the AO, the assessee's trepidation is unwarranted and bereft of merit. A perusal of assessment order passed u/s. 153A r.w.s 143(3) of the Act would show that the AO has picked up assessed income u/s. 143(3) of the Act for the purpose of completion of assessment only and has not made any addition. Once the addition made u/s. 143(3) has been set aside by the Tribunal and the issue is restored to AO for fresh adjudication, the said assessed income would not sustain in proceedings u/s. 153A r.w.s. 143(3) of the Act either. We find no infirmity in the impugned order, ergo, appeal of the assessee is dismissed.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on Friday the 28<sup>th</sup> day of June, 2024.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 28/06/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

**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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI