

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA No. 3842/Del/2023
निर्धारणवर्ष/Assessment Year: 2017-18**

ANAND KUMAR CHAURASIA 575, 1 st Floor, Double Storey, New Rajinder Nagar, New Delhi.	Vs.	DCIT Central circle-27, Ne
PAN No. AAIPC1441K		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

**ITA No. 3843/Del/2023
निर्धारणवर्ष/Assessment Year: 2019-20**

ANAND KUMAR CHAURASIA 575, 1 st Floor, Double Storey, New Rajinder Nagar, New Delhi.	Vs.	DCIT Central circle-27, Ne
PAN No. AAIPC1441K		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

&

**ITA No. 3852/Del/2023
निर्धारणवर्ष/Assessment Year: 2018-19**

ANAND KUMAR CHAURASIA 575, 1 st Floor, Double Storey, New Rajinder Nagar, New Delhi.	Vs.	DCIT Central circle-27, Ne
PAN No. AAIPC1441K		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Rohit Jain, Adv. & Shri Shivam Gupta, CA
राजस्वकीओरसे /Revenue by	Shri Mukesh Kumar Jha, CIT DR

सुनवाईकीतारीख/ Date of hearing:	26.06.2024
उद्घोषणाकीतारीख/ Pronouncement on	21.08.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

These three appeals are filed by the assessee against different orders of the Ld.CIT(A)-29, New Delhi for the assessment years 2017-18, 2018-19 and 2019-20. The assessee has raised the following common grounds in all these three appeals except for the figures:

“1. That on the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) [‘CIT(A)’] erred in dismissing the appeal of the appellant against the order dated 30.09.2021 passed under section 143(3) r.w.s. 153A of the Income Tax Act, 1961 (‘the Act’) ex-parte, without affording adequate opportunity of being heard, in gross violation of principles of natural justice.

1.1 That the CIT(A) erred in adjudicating the appeal ex-parte vide order dated 31.10.2023, in undue haste, not only without considering the detailed written submissions, rejoinder and contemporaneous documents filed, which contained vital/crucial arguments fundamental to adjudication of appeal, but also not affording personal hearing, despite repeated request(s).

1.2 That the CIT(A) erred in relying upon ex-parte enquiries conducted with the assessing officer behind the back of the appellant during the course of appellate

proceedings, without even confronting/ informing about the same to the appellant, much less allowing opportunity of rebuttal and hearing thereon, resulting in blatant violation of principles of natural justice.

Without Prejudice

2. That the CIT(A) erred on facts and in law in not holding that the assessment order dated 30.09.2021, passed under section 143(3) r.w.s. 153A of the Act is beyond jurisdiction, bad in law and void-ab-initio.

2.1. That the CIT(A) erred in not appreciating that the impugned assessment and/ or the additions made therein, having been completed/ made de-hors any incriminating material/document found/ seized during the course of search under section 132 of the Act in the case of the appellant, is illegal and bad in law.

2.2. That the CIT(A) erred in not appreciating that ex-parte statement(s), per se, which too stood retracted, bearing no evidentiary value, could not be treated as 'incriminating material' unearthed during search and seizure.

2.3. That the CIT(A) erred in not appreciating that the impugned assessment order under section 143(3)/ 153A was passed in gross violation of provisions of section 153D of the Act inasmuch as the statutory approval, if any, was not provided to the appellant, thereby rendering the assessment beyond jurisdiction and bad in law.

Without Prejudice - On Merits

3. That the CIT(A) erred on facts and in law in confirming the action of the assessing officer in assessing the income of the appellant at Rs.34,26,53,830 as against income of Rs.28,78,17,230 declared by the appellant.

4. That the CIT(A) erred on facts and in law in confirming the addition of Rs.31,78,46,580 being gross consideration received on sale of diamonds, as unexplained credits under section 68 of the Act, in

place of long-term capital gains thereon of Rs.26,35,82,101 being declared by the appellant in the return of income.

4.1 That the CIT(A) erred on facts and in law in confirming the action of the assessing officer in holding/alleging, on mere conjectures and surmises, that the transaction of sale/purchase of diamonds, resulting in long-term capital gains, was not legitimate/genuine transaction.

4.2 That the CIT(A) erred in not appreciating that the aforesaid addition has erroneously been made in the assessment order by questioning the sovereign/statutory immunity granted to the declaration made and accepted under the Income Declaration Scheme, 2016 (“IDS”),and therefore, the addition was wholly without jurisdiction, illegal and bad in law and liable to be deleted in toto.

4.3 That the CIT(A) erred in not appreciating that the existence of diamonds, including source thereof, and its subsequent sale could not have been called in question, considering the statutory immunity granted under the said IDS.

4.4 That the CIT(A) erred on facts and in law in not reversing/ setting aside the assessment order drawing adverse inference(s)on the basis of ex-parte material/ statement(s), without such materials/ statements being subjected to tests of rebuttal/ cross-examination, in gross violation of the settled principles of natural justice.

4.5 That on the facts and circumstances of the case, the impugned order passed by the CIT(A) is self-contradictory inasmuch as initially the CIT(A) went into the question of determination whether sale transaction resulted in long-term or short term capital gains, thereby accepting the transaction as such, but at the later stage holding, by taking a complete U turn, the transaction itself to be a bogus transaction.

4.6 That the CIT(A) erred in, that too behind the back of the appellant, placing reliance on the order dated

28.06.2023 passed by the Adjudicating Authority under the Prohibition of Benami Property Transactions Act, 1988 (in short “the Benami Act”), without even confronting the same to the appellant and without attempting to find out the complete facts, appreciate the controversy involved and the current status of the Benami proceeding.

4.7 The CIT(A) erred in drawing adverse inference against the appellant by relying upon ex-parte communication/material purportedly shared by the assessing officer behind the back of the appellant and not even forming part of assessment records, which was not at all forwarded/confronted to the appellant at any stage.

4.8 That the CIT(A) erred on facts and in law in doubting the genuineness of the polishing and cutting of raw diamonds, without appreciating that the same was supported by corroborative material like invoices, confirmations and other substantive material(s)/evidence(s) to support the transaction.

4.9 That the CIT(A) erred on facts and in law in not appreciating that there was no warrant to doubt the sale of processed diamonds considering, inter alia, that (a) the buyers were well-established traders in the business of trading of diamonds with strong financial track-record and credibility and have repeatedly confirmed the transactions of purchase; and (b) the impugned proceedings were weaved on a non-existent facts and the entire case was based on the fallacious premise that the diamonds declared under the IDS do not exist.

4.10 That the CIT(A) erred in alleging that the retraction affidavit(s) filed by Sh. Yogendra Raj Singhvi was not genuine on the incorrect premise that the same was not notarised, without even considering the detailed rebuttal/rejoinder filed during the appellate proceedings and without appreciating that the initial statement relied upon has no evidentiary value in the eyes of law.

4.11 *That on the facts and circumstances of the case and in law, adverse inference(s) drawn based on allegations regarding certain irregularity in notarization of affidavit of Sh. Singhvi was totally unwarranted and misplaced inasmuch as Sh. Singhvi has repeatedly, before various authorities including in proceedings under the Benami Law, stood by and confirmed the contents of the retraction affidavit.*

4.12 *Without prejudice, that the CIT(A) erred in upholding the action of the assessing officer in invoking the provisions of section 68 of the Act, which was not at all applicable in the case of the appellant.*

5. *That the CIT(A) erred on facts and in law in confirming addition of Rs.5,72,124 under section 69C of the Act on account of alleged commission paid by the appellant in the assessment year under consideration for receiving accommodation entry.*

5.1 *That the CIT(A) erred on facts and in law in presuming that the appellant had paid commission @ 0.18% amounting to Rs.5,72,124 for the aforesaid alleged accommodation entry, without any documentary evidence in support of the same.*

6. *Without prejudice, the lower authorities erred on facts and in law in assessing gross consideration on sale of diamonds of Rs.31,78,46,580/- as unexplained credit without allowing reduction/ credit of Rs.49,95,35,240/- being the amount already declared under the IDS.*

7. *Without prejudice, on facts and in law the assessing officer erred on not allowing credit/reduction of tax of Rs.22,47,90,858/- on Rs.49,95,35,240/- already declared under the IDS.*

8. *That the CIT(A) erred in confirming the action of the assessing officer in levying interest under section 234B of the Act.*

The appellant craves leave to add, amend, alter or vary the above grounds of appeal at or before the time of hearing.”

2. Ld. Counsel for the assessee, at the outset, submits that the Ld.CIT(A) passed *ex parte* order without providing adequate opportunity of being heard to the assessee which is in gross violation of principles of natural justice. The Ld. Counsel for the assessee submits that the Ld.CIT(A) while passing the order relied upon *ex parte* enquiries conducted with the AO during the course of appellate proceedings, without even confronting and informing about the same to the assessee. In other words, the Ld.CIT(A) did not provide any opportunity to rebut on the submissions made by the AO during the appellate proceedings. Therefore, the Ld. Counsel for the assessee submits that these appeals may be restored back to the file of the Ld.CIT(A) for fresh adjudication after providing adequate opportunity to the assessee. On a query from the Bench as to whether these appeals should be restored to the file of the Ld.CIT(A) the DR expressed no serious objection.

3. On hearing both the parties and on going through the grounds of appeal and various contentions therein we feel it appropriate to restore these appeals to the file of the Ld.CIT(A) for fresh adjudication after providing adequate opportunity of being heard to the assessee. We further observed that the information, enquiries conducted if any during the course of appellate proceedings be

confronted to the assessee for his rebuttal. With these observations these appeals are restored to the file of the Ld.CIT(A) for fresh adjudication in accordance with law.

4. In the result, appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 21/08/2024

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Dated: 21.08.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi