

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.85/Ind/2024
(Assessment Year: 2012-13)

Smt. Barkha Khandelwal Aggrieved Assesse 1108, Pinnacle D Dreams, Tower -1 Near Bhawan Prominent School Pipliyakumar, Indore	Vs.	ITO -3(1) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AJNPK4150B		
Assessee by	Shri Rakesh Gupta, AR	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	12.09.2024	
Date of Pronouncement	20 .09.2024	

O R D E R

Per Vijay Pal Rao, JM :

This appeal by assessee is directed against the order dated 17.01.2024 of the Commissioner of Income Tax (Appeal) National Faceless Appeal Centre (NFAC) Delhi, for A.Y.2012-13. The assessee has raised following grounds of appeal:

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in dismissing the appeal by treating it as defective and not maintainable and that too without any basis, material and evidence available on record and without appreciating the facts and circumstances of the case and Ld. CIT(A) ought to have decided the appeal on merits.

2. That in any case and in any view of the matter, action of Ld. CIT(A) is highly unjustified in not deciding the appeal on merits.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in passing the impugned and that too without providing the opportunity of hearing.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed u/s 143(3)/147 without assumption of jurisdiction as per law and without complying with mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.

5. That in any case and in any view of the matter, action of Ld. CIT(A) in not quashing the impugned reassessment order passed u/s 143(3)/147, is illegal, bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order and that too without assuming valid territorial jurisdiction as per law.

7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order as the same has been passed on a non-existent entity.

8. That having regard to the facts and circumstances of the case, impugned reassessment order dated 15.12.2019 is bad in

law inter alia for the reason that DIN number was not mentioned on the same and mandatory requirement of CBDT circular No. 19/2019 dated 14.08.2019 have not been complied with as is must as held in the judgements of CIT (International Taxation) vs. Brandix Mauritius Holdings Ltd., ITA No. 163/2023, dated 20.03.2023 (Del), PCIT(E) vs. M/s Tata Medical Centre Trust, ITAT/202/2023, dated 26.09.2023 (Cal) and Ashok Commercial Enterprises vs. Asstt. CIT, WP No. 2595 of 2021, dated 04.09.2023 (Bom) and CBDT Circular No. 19/2019 dated 14.08.2019.

9. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of Rs.10,83,43,000/- made by Ld. AO by treating it as alleged income of assessee and that too on protective basis by recording incorrect facts and findings and without observing the principles of natural justice.

10. That in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the addition of Rs.10,83,43,000/- made by Ld. AO by treating it as alleged income of assessee, is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

11. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of Rs.78,80,000/- made by Ld. AO by treating it as alleged income of assessee u/s 68 and that too by recording incorrect facts and findings and without observing the principles of natural justice.

12. That in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the addition of Rs.78,80,000/- made by Ld. AO by treating it as alleged income of assessee u/s 68, is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

13. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B and 234C of Income Tax Act, 1961.

14. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

2. At the time of hearing Ld. Counsel for the assessee has submitted that the CIT(A) has dismissed the appeal of the assessee as not maintainable and defective without even giving show cause notice to the assessee nor an opportunity to explain the maintainability of the appeal. He has referred to para 6 & 7 of the impugned order and submitted that the CIT(A) has dismissed the appeal of the assessee on the ground that the assessee being an ex-partner of dissolved partnership firm M/s JSM Devcon is not a assessee against whom the assessment order is passed without considering the fact that the assessee is an aggrieved person being ex-partner of dissolved firm and is entitled to challenge the assessment order passed by the AO. He has referred to the provisions of section 189 and submitted that as per sub-section (3) a person who was partner at the time of dissolution of a firm shall be jointly and severally liable for amount of tax, penalty or other sum payable and all the provisions of this Act, so far as may be, shall apply to any such assessment. He has then referred to section 246A and submitted that as per sub-section (1) of section 246A any assessee aggrieved by any of the orders may file an appeal to the CIT(A) and therefore, the assessee being an aggrieved

person by the order of AO is entitled to challenge the same in the appeal. In support of his contention he has relied upon following decisions:

“1.Sh. Prem Chand Plantation Pvt. Ltd. 992/2009 dated 31.12.2010 (Del).

2. Tatawarthy Narayana Murthy vs. CIT, (1963) 49 ITR 0766 (AP).

3.CIT vs. Sannanna Chetty & Sons, (1991) 190 ITR 0018 (Madras).

4.CIT vs. N. CH. R. Row & Co., (1983) 144 ITR 0557 (Calcutta).”

3. Thus, Ld. AR has submitted that it has been held by the Hon’ble High Courts as well as this Tribunal that any person who feels aggrieved with the result of the order passed by the tax authorities has a right to appeal before appellate authority. Such rights to appeal are not confined technically to the parties who was a party in the assessment order. Thus, Ld. Counsel has submitted that the impugned order of the CIT(A) is not justified and the same is liable to be set aside. He has pleaded that the matter may be remanded to the record of the CIT(A) for deciding the same afresh after giving opportunity of hearing to the assessee.

4. On the other hand, Ld. DR has relied upon the impugned order of the CIT(A).

5. We have considered rival submissions as well as relevant material on record. The assessment has been framed by the AO against the M/s JSM Devcon which was dissolved on 15.07.2015.

Aggrieved by the assessment order the assessee being ex-partner of the said dissolved partnership firm filed appeal before the CIT(A) and explained the background facts of the case as recorded by the CIT(A) in para 2(1) as under:

“2. Facts of the Case:- IN CASE OF SMT. BARKHA KHANDELWAL AS AN AGGRIEV ED ASSESSEE, EX. PARTNER OF DISSOLVED FIRM NAMELY MIS JSM DEVCON FOR AY. 2012-13 AGAINST ORDER U/S 143 (3)/147 OF INCOME TAX ACT, 1961.

1. The dissolved Firm namely M/s, JSM Devcon was incorporated on 06.06.2011 by Shri Pushpendra Badera and Smt. Barkha Khandelwal in the name of JSM Developers having registered office at 306, Orbit Mall. Scheme No.54, A. B. Road. Indore. Thereafter name of the firm was changed to JSM Devcon we.f. 01.06.2015 and Smt. Krishna Badera wife of Shri Pushpendra Badera was admitted as new partner. Registered office of the firm was shifted to A 302, Clifton, Raviraj Oberoi Complex, New Link Road, Andheri (W), Mumbai 400053. Consequently PAN of the firm has been shifted to Mumbai on 19.06.2015. Thereafter, the Firm was dissolved on 15.07.2015 and Smt. Krishna Badera took over all the assets and liabilities of the firm and continued as a sole proprietor.”

5.1 Thus, this fact was brought to the notice of the CIT(A) that M/s JSM Devcon was dissolved on 15.07.2015 and the assessee being an ex-partner of the dissolved firm is aggrieved by the order of the AO and consequently filed the appeal. The CIT(A) has dismissed the appeal of the assessee on the reasons recorded in para 6 & 7 as under:

“6. Decision:

6.1 The appellant has filed this appeal as aggrieved ex-partner of dissolved firm M/s JSM Devcon for A.Y. 2012-13. The facts are that the assessment proceedings in the case of M/s JSM Devcon a partnership firm were completed u/s 143(3) r.w.s. 147 of the Income Tax Act by ITO Ward 3(1), Indore vide his assessment order dated 15.12.2019.

6.2 The appellant vide her appeal filed with the then CIT(A)-1, Indore has challenged the said order of the ITO as an aggrieved ex-partner CIT(A) firm M/s JSM Devcon. On perusal of the Form 35 it is seen that the name of the appellant is mentioned as Barkha Khandelwal having PAN AJNPK4150ame of the appealing challenged in the appeal has been passed in the case of M/s JSM Devcon having PAN AAIFJ0014D. Therefore the appeal filed by the appellant is defective and is not maintainable.

7. The appeal is dismissed as being defective and not maintainable.”

5.2 Thus, the CIT(A) has held that the appeal filed by the assessee is not maintainable due to the reason that the AO passed the order against M/s JSM Devcon having different PAN no. than the PAN no. of the assessee who is an ex-partner. It is pertinent to note that as per section 189 in case of dissolved firm the AO shall make an assessment of total income of the firm as if no such discontinuation or dissolution has taken place and all the provisions of this Act including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this act shall apply, so far as may be, to such assessment. As per sub-section (3) of section 189 every person who was at the time of such discontinuance or dissolution a partner of the firm and the legal representative of any such person shall be jointly and severally liable for the amount of

tax, penalty or other sum payable and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum. For ready reference section 189 (1) & (3) are quoted as under:

“189. Firm dissolved or business discontinued.

(1)Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the [Assessing Officer] [Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).] shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

(2)xxxxxxxxxxxxxxxxxxxx

(3)Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.”

5.3 Thus, tax liability of dissolved firm is also fasten to the ex-partner of the firm jointly and severally and thereby the partner of dissolved firm is an aggrieved party by the assessment order passed against the dissolved partnership firm. The Hon’ble Calcutta High Court in case of CIT vs. N.CH. R. ROW & Co. (supra) has considered this issue in para 11 & 12 as under:

“11. Now in this case the finding of the Tribunal is that 75% of the firm's income was being allocated to P. Bhaskara Rao and was being included in the income of P. Bhaskara Rao by the ITO at Vizianagaram. on allocation of the firm's income. Therefore, P. Bhaskara Rao was directly interested in the assessment of the firm and came within the description of "an assessee aggrieved by the order of the

AAC". In that view of the matter the Tribunal was right in holding that P. Bhaskara Rao could be permitted to come on record as a person affected by the assessment under appeal and that as P. Bhaskara Rao became liable to pay tax assessed on the assessee-firm, he had locus standi to intervene in the appeal filed on behalf of the firm, especially when the two persons shown as partners of the firm had died during the pendency of the appeal and the legal representatives were not interested in prosecuting the appeals.

12. In the case of [Adi Pheroazshah Gandhi v. H.M. Seervai](#), , the meaning of the phrase "person aggrieved" came up for consideration before the Supreme Court. M. Hidayatullah C.J. pointed out (p. 387):

"The expression a 'person aggrieved' is not new, nor has it occurred for the first time in the [Advocates' Act](#). In fact it occurs in several Indian Acts and in British statutes for more than a hundred years. In the latter a right of appeal to a 'person aggrieved' is conferred in diverse contexts. It occurs in the Ale House Act, the Bankruptcy Acts, Copyright Act, Highway Act, Licensing Acts, Milk and Dairies (Amendment) Act, Rating and Valuation Act, Summary Jurisdiction Act, Union Committee Act, Local Acts, in certiorari proceedings and the Defense of Realm Regulations to mention only a few. The list of Indian Acts is equally long."

5.4 Thus, if tax liability is imposed as per provisions of Income Tax Act on partner of the dissolved firm as a result of assessment or an appealable orders the said partner is certainly aggrieved person as contemplated in section 246A(1) of the Act which read as under:

“Appealable orders before Commissioner (Appeals)

82 [Appealable orders before Commissioner (Appeals).

246A. (1) Any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—

(a) an order 83[passed by a Joint Commissioner under clause (ii) of sub-section (3) of [section-115VP](#) or an order] against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of [section-143](#), where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of [section-143](#) or [section-144](#), to the income assessed, or to the

amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

⁸⁴[(aa) an order of assessment under sub-section (3) of [section-115WE](#) or [section-115WF](#), where the assessee, being an employer objects to the value of fringe benefits assessed;

(ab) an order of assessment or reassessment under [section-115WG](#);

(b) an order of assessment, reassessment or recomputation under [section-147](#) or [section-150](#);

⁸⁵[(ba) an order of assessment or reassessment under [section-153A](#);

(c) an order made under [section-154](#) or [section-155](#) having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;

(d) an order made under [section-163](#) treating the assessee as the agent of a non-resident;

(e) an order made under sub-section (2) or sub-section (3) of [section-170](#) ;

(f) an order made under [section-171](#);

(g) an order made under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of [section-185](#) in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;

(h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section-186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992 or any earlier assessment year;

⁸⁶[(ha) an order made under [section-201](#);

⁸⁷[(hb) an order made under sub-section (6A) of [section-206C](#);

(i) an order made under [section-237](#);

(j) an order imposing a penalty under—

(A) [section-221](#); or

(B) [section-271](#), [section-271A](#) , ⁸⁸[[section-271AAA](#),] [section-271F](#) , ⁸⁹[[section-271FB](#),] [section-272AA](#) or [section-272BB](#);

(C) [section-272](#), [section-272B](#) or [section-273](#), as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;

⁹⁰[(ja) an order of imposing or enhancing penalty under sub-section (1A) of [section-275](#);

(k) an order of assessment made by an Assessing Officer under clause (c) of [section-158BC](#), in respect of search initiated

under [section-132](#) or books of account, other documents or any assets requisitioned under [section-132A](#) on or after the 1st day of January, 1997;

(l) an order imposing a penalty under sub-section (2) of [section-158BFA](#) ;

(m) an order imposing a penalty under [section-271B](#) or [section-271BB](#);

(n) an order made by a Deputy Commissioner imposing a penalty under [section-271C](#) ⁹¹ [, [section-271CA](#)], [section-271D](#) or [section-271E](#);

(o) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under [section-272A](#);

(p) an order made by a Deputy Commissioner imposing a penalty under [section-272AA](#);

(q) an order imposing a penalty under Chapter XXI;

(r) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

5.5 Similarly in case of Tatawarthy Narayana Murthy vs. CIT (supra) the Hon'ble Madras High Court has considered a similar question in para 2 to 6 as under:

“2. The view taken by the Tribunal is erroneous. If penalty was levied as against an HUF and the members of the HUF effected partition between them, there can be no doubt that the erstwhile coparceners are entitled to prefer an appeal and question the levy of penalty. The members of the Tribunal erred in taking the view that after the division is effected between the members of the HUF none of the erstwhile coparceners are entitled to prefer an appeal and that the levy of penalty should stand.

3. In Mahindra Kumar Mohanlal vs. Commissioner of Excess Profits Tax (1958) 33 ITR 360, a similar question arose for decision. Tendolkar J., delivering the judgment of the Bench, took the same view. He observed at p. 364 as follows:

"With great respect to the Members of the Tribunal, the view appears to us to be somewhat revolutionary that an assessment made cannot be challenged in appeal by any person but becomes binding."

4. Lower down, he observed as follows:

"If the Tribunal's view is correct, an EPTO has merely to make an assessment on a disrupted Hindu family. No one has a right to appeal against such an assessment and yet the amount to which the HUF Is assessed can be recovered from the erstwhile coparceners of the HUF. If such were the position in law, it would, prima facie, be a monstrous position; but we see nothing in the law to warrant the view that the Tribunal thought fit to take. "

5. The learned judge further added:

"It is true that after disruption the family does not exist; but if the taxing authorities chose to ignore this fact and treat it as an existing family, it must of necessity be treated as an existing family for the purpose of the right of appeal. Equally the only persons who could appeal on behalf of the HUF would be the erstwhile coparceners of that HUF who are in law liable to pay any tax imposed on the HUF; and this is why the coparceners of the divided Hindu family got the locus standi to appeal against an order under the EPT Act against a disrupted Hindu family."

6. We, therefore, answer the question in the affirmative and hold that an appeal lies to the Tribunal. The Tribunal will decide the appeal on the merits. The petitioner is entitled to his costs. The advocate's fee is fixed at Rs. 200."

5.6 Therefore, section 246 & 246A gives right of appeal to an assessee aggrieved by any order(s) passed under sections as specified in those provisions. Accordingly in view of the facts and circumstances as well as the legal proposition discussed above we

hold that the assessee is entitled to challenge the assessment order in question by filing an appeal and therefore, the impugned order of the CIT(A) dismissing the appeal of the assessee by treating the same as not maintainable is contrary to the law and the same is set aside. Since the CIT(A) has not decided the appeal of the assessee by affording opportunity of hearing to the assessee therefore, the matter is remanded to the record of the CIT(A) for fresh adjudication on merits after giving an appropriate opportunity of hearing to the assessee.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20.09.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 20 .09.2024
Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore