

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "A", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

AND

SHRI SUDHIR KUMAR, JUDICIAL MEMBER

ITA NOS. 3263 & 3264/Del/2024		
A.YR. : 2021-22		
ARPIT GARG, B/2/801, TULIP ACE, SECTOR-89, GURGAON, HARYANA (PAN: BDLPG3178G)	VS.	ASSESSING OFFICER, ASSESSMENT UNIT, INCOME TAX DEPARTMENT, NEW DELHI – 110 001
(APPELLANT)		(RESPONDENT)

Appellant by : None
Respondent by : Mr. Javed Akhtar, CIT(DR)

Date of hearing : 10.10.2024
Date of pronouncement : 15.10.2024

ORDER

PER SHAMIM YAHYA, AM :

These appeals are filed by the assessee against the respective impugned orders both dated 16.05.2024 passed in the quantum appeal as well as in penalty appeal relating to assessment year 2021-22 by the Ld. CIT(A)/NFAC, New Delhi.

2. The grounds raised in the Quantum appeal No. 3263/Del/2024 read as under:-

1. That on the facts and circumstances of the case and in law, Ld. CIT (A) has erred in confirming the order passed u/s 144 by the Ld. AO upholding whole of the purchases of Rs. 35,04,10,173 as unexplained expenditure without considering the Sales of Rs. 33,09,17,912.80 against those purchases.

2. That on the facts and circumstances of the case and in Law, Ld. CIT (A) has erred and confirmed the addition without appreciating that in case of trading business no Sales can be affected without any purchases.

3. That on the facts and circumstances of the case and in Law, Ld. CIT (A) has erred and dismissed the appeal by fixing two dates i.e. 07/05/2024 and 14/05/2024, hence not provided sufficient time to opportunity of being heard and violated the principle of natural justice.

4. That on the facts and circumstances of the case and in Law, Ld. CIT (A) has erred and not provided sufficient opportunity to produce evidence of Rs. 200000 claimed as interest on borrowed capital for house property.

5. That on the facts and circumstances of the case and in Law, Ld. CIT (A) has erred and not provided sufficient opportunity to produce evidence of Rs. 1,50,000 claimed as deduction under section 80C.

6. That the impugned Assessment Order is arbitrary, illegal, bad in law and in violation of rudimentary principle of contemporary jurisprudence.

3. The grounds raised in Penalty appeal No. 3264/Del/2024 read as under :-

1. That on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in confirming the order passed u/s 144 by the Ld. AO upholding whole of the purchases of Rs. 35,04,10,173 as unexplained expenditure\false entry, without considering the Sales of Rs. 33,09,17,912.80 against those purchases and imposed a penalty of Rs. 35,04,10,173/- u/s 271 AAD.

2. That on the facts and circumstances of the case and in Law, Ld. CIT (A) has erred and confirmed the addition without appreciating that in

case of trading business no Sales can be affected without any purchases and penalty imposed without satisfying the condition of section 271 AAD.

3. That on the facts and circumstances of the case and in Law, Ld. CIT (A) has erred and dismissed the appeal by fixing two dates i.e. 07/05/2024 and 14/05/2024, hence not provided sufficient time to opportunity of being heard and violated the principle of natural justice.

4. That the impugned Assessment Order is arbitrary, illegal, bad in law and in violation of rudimentary principle of contemporary jurisprudence.

5. That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal on or before hearing of this appeal.

4. Since both the appeals are inter-connected and relating to the same assessment year i.e. 2021-22, hence, we are disposing off the same by passing the common order.

5. The brief facts of the case as culled out in the quantum appeal are that the Assessing Officer passed an exparte assessment order u/s. 144 of the I.T. Act, 1961 on 13.12.2022. The final computation of taxable income as per the AO's assessment order is as under:-

Sl No.	Description	Amount (in INR)
1.	Income as per Return of Income filed	3,19,670
2.	Income as computed u/s. 143(1)(a)	3,19,670
3.	Variation on account of unexplained expenditure as purchases	35,04,10,173
4.	Variation on account of disallowance of deduction u/s. 80C	1,50,000
5.	Variation on account of disallowance of interest on borrowed capital for house property	2,00,000
6.	Total assessed income	35,10,79,843

6. Upon assessee's appeal, Ld. CIT(A) noted that due to total non-compliance, on the part of the assessee during the appeal proceedings, it is difficult for him to adjudicate the appeal for want of adequate submission and clarification, counter clarification, hence, he dismissed the appeal for non-compliance.

7. Against the order of the Ld. CIT(A), assessee is in appeal before us.

8. At the time of hearing, none appeared on behalf of the assessee, despite issue of notice for hearing, therefore, both the appeals of the assessee are being disposed off exparte qua the assessee, after hearing the Ld. DR and perusing the relevant records.

9. During the hearing, Ld. DR fairly agreed that in this case the AO has passed the exparte order u/s. 144 of the Act as well as Ld. CIT(A) has also passed the order for non-compliance, hence, in the interest of justice, he has no objection, if the issues are remitted back to the file of the AO for fresh adjudication.

10. Upon careful consideration, we find that AO has passed the exparte order u/s. 144 of the Act and Ld. CIT(A) has also not passed the order on merit, but he dismissed the appeal of the assessee for non-compliance. Therefore, in view of the aforesaid factual matrix and in the interest of justice, we deem it fit to remit back the issues to the file of the Assessing Officer for fresh adjudication, after giving adequate opportunity of being heard to the assessee. We hold and direct

accordingly. Resultantly, the quantum appeal of the assessee is allowed for statistical purposes.

11. As regards the penalty appeal No. 3264/Del/2024 is concerned, since we have already remitted back the issues raised in the assessee's quantum appeal No. 3263/Del/2024 to the file of the AO for fresh adjudication, as aforesaid, consequently, the issues raised in the assessee's Penalty appeal No. 3264/Del/2024, also stand remitted back to the file of the AO for fresh adjudication, after giving adequate opportunity of being heard to the assessee. Resultantly, the penalty appeal of the assessee is also allowed for statistical purposes.

12. In the result, both the Assessee's appeals are allowed for statistical purposes.

Order pronounced on 15/10/2024.

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar