

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "B", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER

	ITA NO. 1216/Del/2024		
	A.YR. : 2012-13		
MRS. GEETA GOGNA, C/O L.N. MALIK & CO., CA 18/13, WEA, PUSA LANE, KAROL BAGH, NEW DELHI – 5 (PAN: AHLPG7686C)	VS.	ITO, WARD 16(3), NEW DELHI – 2	
(APPELLANT)		(RESPONDENT)	

Appellant by : Sh. Manish Malik, Adv. & Sh. Pankaj
Jain, ITP

Respondent by : Shri Surender Pal, CIT(DR)

Date of hearing : 28.11.2024

Date of pronouncement : 04.12.2024

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(Appeal)/NFAC, Delhi dated 19.2.2024, relating to assessment year 2012-13 on the following grounds:-

1. That on the facts and circumstances of the case, the Ld. Commissioner of Income-tax (Appeals) grossly erred in sustaining the addition of Rs. 1 lac made by the Assessing Officer on the ground of sale of shares in the company, M/s.Turbotech Engineering Limited and claiming exemption of capital gains u/s. 10(38) of the I.T. Act, 1961 are bogus and hence the

exemption claimed was rightly disallowed by the Assessing Officer.

2. That the Ld. Commissioner of Income-tax (Appeals) grossly erred on facts and in law in:-
 - a) Sustaining the addition made by the Assessing Officer u/s. 153C of the Act in the absence of any incriminating material found in the case of the appellant.
 - b) Sustaining the order framed u/s.143(3)/153C of the Act in the absence of any incriminating documents found during the course of search and no addition/disallowance could be made in the assessment order passed u/s. 143(3)/153A of the Act in a case where the assessment is not pending.
3. That the Ld. Commissioner of Income-tax (Appeals) erred on facts and in law in sustaining addition of Rs. 1 lac made by the Assessing Officer by treating the purchase of shares as bogus purchases without verifying the documents that the purchases were made out of own sources of funds.
4. That the Ld. Commissioner of Income-tax (Appeals) erred on facts and in law in sustaining the addition of Rs. 1,500/- made by the Assessing Officer by treating the commission paid as the deemed income without any evidence.

2. In this case, AO made an addition of Rs. 1,00,000/- u/s. 68 of the Act on account of Long Term Capital Gain (LTCG) and completed the assessment u/s. 143(3) r.w.s. 153C of the Act by assessing the total income at Rs. 3,73,260/-.

3. Upon assessee's appeal, Ld. CIT(A) dismissed the appeal of the assessee by sustaining the addition of Rs. 1,00,000/- on account of LTCG.

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

5. We have heard both the parties and perused the records. At the time of hearing, Ld. AR for the assessee reiterated that Ground No. 3, which was raised before the Ld. CIT(A) has not been adjudicated by him, which went to the jurisdiction of the matter and require adjudication in the interest of justice.

Hence, he prayed that an opportunity may be given to the assessee to canvass

his case before the Ld. CIT(A) with the directions to Ld. CIT(A) to consider and decide the Ground No. 3, which was raised before him and thereafter pass a speaking order. Per contra, Ld. DR could not dispute the aforesaid proposition made by the Ld. AR for the assessee.

6. Upon careful consideration, we find that Ground No. 3 before the Ld. CIT(A) read as under :-

“3. That on the facts and circumstances of the case and in law, the AO erred in :

- a. Making the addition as assessment u/s. 153C of the Income Tax Act should be restricted to the assessment in respect of seized documents of incriminating nature in the case of appellant for the year under consideration and in the absence of any incriminating seized documents in the case of appellant, assessment framed u/s. 153C of the Income Tax Act for the year under consideration is bad in law and desired to be quashed.*
- b. Framing assessment u/s. 143(3)/153C of the Act in the absence of any incriminating documents found during search and no addition / disallowance can be made in the assessment u/s. 153A or 153C of the Act in a case where assessment is not pending.*

6.1 We find considerable cogency in the contention of the ld. AR for the assessee that the aforesaid Ground No. 3, which was raised before the Ld. CIT(A) has not been adjudicated by him, which went to the jurisdiction of the matter. In this view of the matter, we deem it appropriate and fit to remit back the matter to the Ld. CIT(A) with the directions to consider the Ground No. 3, which was undecided by him and thereafter pass a speaking order. Needless to say, the assessee should be granted adequate opportunity of being heard.

7. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced on 04/12/2024.

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRBHATNAGAR

Copy forwarded to:-

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

Assistant Registrar