

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,  
NEW DELHI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 1018/DEL/2024 [A.Y 2017-18]

Shri Anil Kant  
B-89, Derawal Nagar,  
Model Town, Delhi

Vs.

The Dy. C.I.T  
Special Range - 12  
New Delhi

PAN - AAJPK 8726 G

(Applicant)

(Respondent)

Assessee By : Shri Manpreet Singh Kapoor, CA  
Shri Rajinder Singh Rathore, Adv

Department By : Shri Vipul Kashyap, Sr. DR

Date of Hearing : 29.10.2024

Date of Pronouncement : 16.12.2024

**ORDER**

**PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
NFAC, Delhi dated 12.02.2024 pertaining to A.Y 2017-18.

2. The assessee has raised the following grounds of appeal:

"1. The CIT (A) is erred in law by conforming the order passed of Assessing Officer u/s 154 is bad in law on facts and circumstances of the case.

2. That CIT (A) order is bad In law, as no opportunity of Virtual hearing was not provided, as being asked during the appellate proceeding, which is against principal of natural justice and which makes the order bad in law.

3. That CIT (A) erred in law by not adjudicating the ground of appeal, Including the additional ground of appeal, which is bad in law and makes the CIT (A) order bad in law.

4. The CIT (A) Is erred in law by not providing remand report, whereas AO has asked all documents called upon w.r.t. such remand report, which is bad in law.

5. The CIT (A) Is erred in law by confirming the addition made by Ld.AD on account of difference of Rs.4,38,92,586/- in Imports as per VAT Returns and as per CBEC data which is bad in law and liable to be deleted.

6. on account of difference in customs duty of Rs. 9,27,478/- as per ITR and value of imports as per CBEC data which is bad in law liable to be deleted.

7. The CIT (A) Is erred in law by confirming the Ld.AO has erred in law & facts by disallowing expenses of Rs.3,72,057/- relating to the property, which is bad in law liable to be deleted.

8. The CIT (A) is erred in law by confirming the order of AO, to invoke the provision of section 115BBE, which is bad in law and liable to be deleted.

9. The CIT (A) is erred in law by confirming the order of AO whereas AO failed to provide the details w.r.t custom duty & Import purchase item wise and basis of which such figure has been arrived, during the assessment proceeding, which is bad in law.

10. The appellant prays for leave to add, alter, modify and withdraw any of the grounds either before or at the time of hearing."

3. Briefly stated, the facts of the case are that the return of income of the assessee was filed on 09-11-2017 declaring income from business and profession at Rs.37,27,410/-. The case was selected for complete scrutiny under CASS. During the year, the assessee was carrying on business under the name and style of "Neo Enterprises".

4. Statutory notices u/s 143(2) of the Income-tax Act, 1961 [the Act, for short] were issued on 07-09-2018 duly served upon the assessee. Subsequently, notices u/s 142(1) of the Act along with questionnaire were issued online on 16-01-2019, 10-04-2019, 03-06-2019, and 30-08-2019 to the assessee calling for details, submissions and explanations.

5. This case was transferred u/s 127 of Act, 1961, to the office of DCIT, Special Range 12, Delhi through order passed by PCIT-12, Delhi.

Accordingly, notices u/s 142(1) along with questionnaire were issued online on 05-11-2019 and 26-11-2019 calling for details. The Assessee submitted replies from time to time.

6. In the course of assessment proceedings, the AO found that the assessee received a sum of Rs.35,03,43,665/- from one M/s Alpha Radios and Rs.35,48,17,855/-from M/s Integrated Technologies Addition. As there was no explanation coming forth from the assessee, the Assessing Officer made an addition of Rs. 64,22,67,526/- u/s 68 of the Act. The said addition subsequently was however, rectified u/s 154 of the IT Act by the AO to nil vide rectification order dated 28.12.2019.

7. The Assessing Officer had made another addition of Rs. 4,48,20,064/- u/s 69C of the Act w.r.t. difference in import purchase and custom duty, as per balance sheet/VAT return and CBEC data available with Assessing Officer. This addition was retained by the AO in his 154 order.

8. The assessee was aggrieved and filed an appeal before the CIT(A) against the 154 order. The CIT(A) dismissed the appeal on the ground

the addition was subject matter of assessment order 143(3) and not a matter of mistake apparent from record under section 154.

9. Aggrieved further, the assessee is before us.

10. The ld. counsel for the assessee submitted that the Assessing Officer did not make any correction/rectification in the addition amounting to Rs.4,48,20,064/- (4,38,92,586 + 9,27,478) on account of difference in import purchase and custom duty w.r.t. CBEC & VAT return. The Assessing Officer did not rectify such addition with reason that rectification application u/s 154 would not partake the character of mistake apparent from records for such issue. Therefore, mistake w.r.t such addition was not rectified. Whereas all records detail, etc. was already produced by assessee during the assessment proceedings.

11. The ld AR further stated that the CIT(A) erred in law by confirming the rectification order u/s 154, on the ground that this issue requires verification of facts with respect to provisions of law and revenue recognition/ expenses policy of appellant, therefore, it cannot be said that this is a mistake apparent from record and accordingly the appeal was dismissed.

12. It is the say of Id AR that the Id. CIT(A) further did not adjudicate the grounds raised by assessee including the additional ground no.9, which is related to assessment. The CIT(A) held that these grounds which are raised do not pertain to rectification order passed u/s 154 and liable to be dismissed.

13. It is the say of the AR that the CIT(A) called for the remand report from the office of Assessing Officer in response to the additional evidence file during the appellate proceeding u/s 46A. The details for the remand report was furnished to the AO which was neither examined by the AO or the CIT(A).

14. On the issue of disallowance of Rs 3,72,057/-, it is submitted that during the year the assessee sold a flat Plot No. 41, Model Town, Delhi. The consideration for sale of property was Rs.1,14,50,000/-. The Assessing Officer has held that the Assessee has not shown this sale of immovable property in his ITR. In this connection the Assessee submitted that the property sold was treated as profit from Business and Profession and was part of the books of accounts. The property sold was built by Assessee and is included in the audited accounts being shown as opening

stock amounting to Rs.1,08,52,542/-. The Assessee has incurred an expense of Rs.3,72,057/- which the Ld.AO has disallowed holding that Assessee did not provide any evidence. It is vehemently argued that all documents and explanation was provided during the assessment proceeding. The ld AR argued that the CIT (A) did not adjudicate this issue.

15. The ld AR vehemently argued that the CIT (A) has erred in law by not providing the opportunity of Virtual hearing which was requested by assessee during the appellate proceeding which makes the CIT (A) order defective for want of opportunity of being heard.

16. Per contra the ld DR relied on the orders of the CIT(A).

17. We have heard the rival submissions and have perused the relevant material on record. Having heard the rival submission and perusal of the facts, we have arrived at the conclusion that the CIT (A) has not adjudicated the matter on merits and merely dismissed the appeal without considering the materials that the assessee has filed during the assessment proceedings. We also find that the CIT(A) has not accorded adequate opportunity and virtual hearing as requested by the assessee.

In view of the above, we consider it fit, in the interest of justice, to set aside the issue to the file of the CIT for a fresh adjudication after examining all the materials and evidence filed by the assessee during the assessment as well as the remand proceedings. The ground no 2 is allowed.

18. In the result, the appeal of the assessee in ITA No. 1018/DEL/2024 is allowed for statistical purposes.

The order is pronounced in the open court on 16.12.2024.

**Sd/-**

**[VIKAS AWASTHY]  
JUDICIAL MEMBER**

**Sd/-**

**[NAVEEN CHANDRA]  
ACCOUNTANT MEMBER**

Dated: 16<sup>th</sup> DECEMBER, 2024.

VL/

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	