

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
& SHRI PARESH M. JOSHI, JUDICIAL MEMBER**

आयकर अपील सं./ **ITA No. 82/CHD/2023**

निर्धारण वर्ष/ Assessment Year: 2012-13

Alka Malhotra, A-5, Industrial Estate, Ludhiana 141003	Vs. बनाम	ITO, Ward VI (1), Ludhiana
स्थायी लेखा सं./PAN No: AJRPM7712K		
अपीलार्थी/ ASSESSEE		प्रत्यर्थी/ RESPONDENT

(Physical Hearing)

निर्धारिती की ओर से/Assessee by : Shri Hari Om Arora, Advocate

राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT Sr. DR

सुनवाई की तारीख/Date of Hearing : 27.11.2024

उद्घोषणा की तारीख/Date of Pronouncement : 12.12.2024

आदेश/Order

Per Paresh M. Joshi, JM :

This is an appeal filed by the Assessee u/s 253 of the Income Tax Act, 1961 (herein referred to as 'the Act') as and by way of second appeal before this Tribunal. The Assessee is aggrieved by the order bearing No. ITBA/NFAC/5/250/2022-23/1048/364205(1) dated 30.12.2022 of ld. CIT(A) passed u/s 250 of the Act which is herein after referred to as the "impugned order". The relevant A.Y. is 2012-13 and the corresponding previous period is from 1.4.2011 to 31.3.2012.

2. The Assessee in Form 36 which is Form of appeal to this Tribunal has raised following grounds of appeal to challenge the legality, validity and propriety of the impugned order :-

1. *That the impugned order has been passed by the Ld. CIT (A), NFAC, Delhi without proper application of mind and without considering evidence and material already on records, as such the order is liable to be set aside. The Appellant has not been given reasonable and proper opportunity for re-presenting his case, which has resulted in erroneous order and untenable conclusion.*
2. *That the Ld. CIT (A) has failed to consider that reasons for re-opening of the case u/s 147 of the IT. Act, 1961 have not been given by the Ld. AO with copy of approval by the Ld. Pr. CIT-3, Ludhiana passed without proper application of mind and in a Routine manner.*
3. *That the Ld. CIT (A), has failed to consider that the Appellant's request for copies of documents relied on, copy of statement of Sh. Anil Kumar Khemka and others have not been provided to the Appellant, which has made the order void abinitio and bad in law. Various contentions raised before the Ld. AO have not been appraised properly, as such the order deserves to be set aside. Principles of natural justice have been violated and the addition has been confirmed without considering and accepting appellant's request for meeting the justice in the matter.*
4. *That under the facts and circumstances of the case the Ld. CIT (A), is not justified in confirming*

the addition of Rs.49,30,414 made by the Ld. AO u/s 68 of the IT. Act, 1961. The addition confirmed is not based on proper appraisal of facts and documents and other details already on records.

5. *That the Ld. CIT (A), has ignored to consider that Applicant's request for Cross Examination of the Broker/Witness relied on by the Ld. AO for making the addition has not been considered, which has resulted in untenable addition. Further addition has been made arbitrarily by the Ld. AO on inadmissible evidence for want of Cross Examination of the witness relied on.*
6. *That the Ld. CIT (A), has failed to consider that the Appellant's request for copies of documents relied on, copy of statement of Sh. Anil Kumar Khemka and others have not been provided to the Appellant, which has made the order void abinitio and bad in law. Various contentions raised before the Ld. AO have not been appraised properly, as such the order deserves to be set aside. Principles of natural justice have been violated and the addition has been confirmed without considering and accepting appellant's request for meeting the justice in the matter.*
7. *That Provisions of Section 68 of the IT. Act, 1961 have not been construed properly and LTCCG amounting to Rs. 23,81,085 has wrongly been subjected to tax by treating it, as an item following within the Provisions of section 68 of the IT. Act, 1961.*
8. *Without prejudice to foregoing contentions rather fully relying on the same the addition for the same amount of LTCCG has been made twice*

without considering that the Appellant has denied any transaction and/or dealing with DLS Exports Private Limited.

8. *Without prejudice to foregoing contentions rather fully relying on the same the addition for the same amount of LTCCG has been made twice without considering that the Appellant has denied any transaction and/or dealing with DLS Exports Private Limited.*
9. *That the Ld. CIT (A) has ignored to consider that the Ld. AO has failed to discharge its onus regarding Appellant's dealing with M/s. DLF Exports Private Limited. The addition of Rs. 24,64,984 wrongly and arbitrarily made by the Ld. AO has been confirmed.*
10. *That the order is based on surmises and conjectures and it is contrary to law and facts of the case.*
11. *Without prejudice to foregoing contentions that the addition of Rs. 49,30,424 made is unreasonable, uncalled for and in any case it is highly excessive.*
12. *That the Appellant craves leave to amend, modify and/or add new Grounds of Appeal before the Appeal is heard and disposed off.*

3. The Assessee vide application dated 26.4.2023 has raised following additional ground of appeal:

“That the reassessment framed by the ld. Assessing Officer is not sustainable in law, for want of statutory requirement for issuance of Notice u/s 143(2) of the

I.T. Act, 1961 after filing of the Return. The order so passed is liable to be set aside for non-issuance of Notice u/s 143(2) of the Act.”.

4. That the hearing in the matter took place before us on 27.11.2024 when ld. AR brought to our notice at the outset and threshold that the impugned order is in the violation of the Principles of Natural Justice, bad in law and illegal. The ld. AR contended that during the course of the first appellate proceedings before CIT(A) total 07 notices were issued for hearing which are all stated in the impugned order in Para 5, however, the same was not attended to due to certain issues beyond the control of the Assessee. In addition to this submission ld. AR pleaded that issue involved is complex and it would be just fair and convenient that matter be remanded back to CIT(A) to pass a speaking and reasoned order on merits of the case so that this Tribunal can enrich with the finding of Ist Appellate Authority in case issues are decided against the Assessee. However, for the present in the impugned order, no merit are even discussed. Issues are not considered meritoriously at all. Per Contra ld. DR has not resisted this contention of the AR. The ld. AR has undertaken before us that if the matter is remanded back to the file of the CIT(A) the Assessee would cooperate with the Department in speedy manner in such way that Ist appeal is disposed off meritoriously by ld. CIT(A).

5. In the premise we set aside the impugned order and remand the case back to the file of the CIT(A) to pass a fresh order on de novo basis. We direct Assessee to attend the hearing as and when fixed by the Id. CIT(A) and not to seek any adjournment. The Id. CIT(A) to pass speaking and well-reasoned order on merit.

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

Order pronounced on 12.12.2024.

Sd/-

(VIKRAM SINGH YADAV)
Accountant Member

Sd/-

(PARESH M. JOSHI)
Judicial Member

“rkk”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Assessee
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar