

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

**BEFORE SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 6430/MUM/2024
Assessment Year: 2018-19**

Destiny Star (India) Private Limited, Office No. 203, Tulsi Bldg, Somnath Mahadev Ni Sheri, Mahidharpura Gujarat-395003 (PAN : AAFCD2189R)	Vs.	DCIT-Central Circle 8(4), Mumbai Aayakar Bhavan, Maharshi Karve Road, New Marine Lines, Churchgate Mumbai-400020
(Appellant)		(Respondent)

Present for:

Assessee : Mr. Pankaj Jaiswal
Revenue : Smt. Sanyogita Nagpal, CIT DR

Date of Hearing : 06.02.2025
Date of Pronouncement : 11.02.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), Commissioner of Income Tax, Appeal CIT(A) 50, Mumbai, vide order no. ITBA/APL/S/250/2024-25/1069818481(1), dated 21.10.2024 passed against the assessment order by Assistant Commissioner of Income Tax Central Circle 8(4), Mumbai, u/s. 143(3) r.w.s.147 of the Income-tax Act (hereinafter referred to as the “Act”), dated 26.03.2023 for Assessment Year 2018-19.

2. Grounds taken by the assessee are reproduced as under:

“1. On the facts and circumstances of the case and law, the Ld. CTT(A) erred in not giving credit of tax deducted at source.

2. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in charging interest under section 234A and 234B of Income Tax Act, 1961.*
12. *On the facts and circumstances of 2 the case and law, the Ld. CIT(A) erred in levying penalty under section 272A(1)(d) of Income Tax Act, 1961.*
13. *Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.*
3. *On the facts and circumstances of the case and law, the Ld. 3 CIT(A) erred in dismissing the appeal without adjudicating the grounds of appeal.*
4. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming issuance of notice under section 148, even though there is no new tangible material for reopening.*
5. *On the facts and circumstances of the case and law, the Ld. CIT(A) failed to considered that the issue which is subject matter of appeal cannot be considered again in reassessment proceeding.*
6. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming validity of proceeding under section 148 initiated without obtaining proper sanction from appropriate authority under section 151 of Income Tax Act, 1961.*
7. *On the facts and circumstances of the case and law, the Ld. CIT(A) failed to considered that the assessment order passed u/s 7 147 of Income Tax Act, 1961 dated 26.03.2023 without issuing notice u/s 143(2) makes the order itself bad-in-law and required to be quashed.*
8. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in considering the fact that when books of account have already been rejected, then no other addition is permissible on basis of same books of account.*
9. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs. 29,60,09,962/-without mentioning any section for addition assuming commission income of 5% of the total purchases without considering the fact that the transactions of appellant were genuine and bonafide.*
10. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition for the commission income merely relying on the statement recorded without considering the fact the statements were already retracted hence having no evidentiary value.*
11. *The facts and circumstances of the case and law, the Ld. CIT(A) failed to consider the fact that assessment order passed without providing the opportunity of cross examination to the appellant which is in gross violation of principal of Audi Alteram Partem rendering the order to be bad in law liable to be quashed”*

3. At the outset, ld. Counsel submitted vide letter dated 03.02.2025 that assessee is aggrieved by the ex-parte order passed by ld. CIT(A). The reasons for not able to respond to the notice sent by the ld. CIT(A) are that assessee could not appoint any Chartered Accountant at that time and case was fixed for hearing on August and September 2024 on two occasions. In the meantime assessee was looking for Chartered Accountant /authorized representative to represent the case.

4. Ld. CIT(A) had passed the ex-parte order by taking into account statement of fact and observation and finding of Ld. AO in the impugned assessment order

5. On identical set of facts and circumstances, other five assessment years of the assessee namely A.Y. 2016-17, 2017-18, 2018-19, 2019-20, 2020-21 had come up before the Coordinate Bench in ITA no. 6354/Mumbai/24, 6356/Mumbai/24, 6365/Mumbai/24, 6366/Mumbai/24, 6367/Mumbai/24, whereby the matters were restored back to the file of ld. CIT(A) to decide the issue afresh in accordance with law after giving due opportunity of hearing to the assessee. This consolidated order for the five assessment years was pronounced on 30.01.2025.

6. Since in the present case of the assessee, identical facts and circumstances exists, we find it proper to restore this appeal also back to the file of Ld. CIT(A) for meritorious de novo adjudication in accordance with law after giving reasonable opportunity of being heard to the assessee. Accordingly, appeal filed by the assessee is allowed for statistical purposes.

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

Order is pronounced in the open court on 11 February 2025

Sd/-

(Rahul Chaudhary)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 11 February 2025

*Poonam Mirashi,
Stenographer*

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai