

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“DB” AGRA BENCH**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER &  
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No. 170/Agr/2022  
(Assessment Year 2008-09)**

Mrs. Sarita Agrawal Geeta Colony Dal Bazar, Gwalior- 474001 Madhya Pradesh	v.	ACIT Aayakar Bhawan City Centre Gwalior-474001 Madhya Pradesh
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: ADXPK3445P		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Sh. Sukesh Kumar Jain, CIT DR

Date of Hearing	23.01.2025
Date of Pronouncement	14.02.2025

**ORDER**

**PER RAMIT KOCHAR, AM:**

This appeal in ITA No. 170/Agr/2022 filed by the assessee for the Assessment Year 2008-09 has arisen from the appellate order dated 10.08.2022(DIN & Order No. ITBA/NFAC/S/250/2022-23/1044585424(1)) passed by the Ld. Commissioner of Income-Tax(Appeals), NFAC, Delhi, which appeal before Id. CIT(A) in turn has arisen from assessment order dated 21.03.2014 passed by the learned

Assessing Officer(AO) under Section 153Ar.w.s 143(3) of the Income Tax Act.

- “1. On the facts and circumstances of the case he(sic. The) learn CIT(A) erred o considering the fact that when that are no incineration(sic. Incriminating) document found during search, the Capital assessment need not be disbursed until item are specific audition(sic. addition) based on incineration(sic. incriminating) document, have the order is bad in law.
2. On the facts and circumstances after case the appellant being a lady, unaware of e-mail notices, never cause to know abort fizeetion(sic. fixation) of the appeal hence know prepare(sic. no proper) opportunity given to the appellant is illegal unjustified and bad in law.
3. On the fact and circumstances of the case any income earned U.s. 10/38/ buy Long Term Gain on shares on which STT is paid is not to be included in taxable income. Have addition of Rs. 115995/- is illegalunjustified and bad in law.
4. The appellate crave for adding , deleting and/or modifying any ground of appeal before its final hearing.”

2. Brief facts of the case are that a search and seizure operation was carried out by Revenue at the various residential premises of Shri Suresh Chand Bansal, Shri Ramesh Chand Agrawal, Shri Gopal Krishna Agrawal, their family and business associates (hereinafter called Bansal and Agrawal group of cases) on 08.07.2011, and was finally concluded on 09.08.2011. The assessee is associated with Agrawal group of cases. Notice under Section 153A was issued on 11.12.2012 by the AO directing the assessee to file her return of income, which notice was claimed by the AO to have been duly served upon the assessee. In response to notice issued by the AO u/s 153A, the assessee filed return of income on 10.09.2013 ,declaring total income of Rs.1,33,032/- . Subsequently, notice under Section 143(2) was issued by the AO to the assessee, which was claimed by the AO to have been duly served on the assessee. The assessee participated in the assessment proceedings. The assessee

derived income from salary, tuition, embroidery and interest income. The AO observed that the assessee has shown long term capital gain on sale of shares ,and the income was claimed as exempt from income-tax. The assessee was asked by the AO to furnish complete details of purchase and sale of shares/mutual funds, but the assessee did not file any evidences nor filed any reply. The AO made addition of Rs.1,15,995/- to the income of the assessee as income from other sources, vide assessment order dated 21.03.2014 passed under Section 153A r.w.s 143(3) of the Act.

3. Aggrieved ,the assessee filed first appeal before the Ld. CIT(A). The ld. CIT(A) issued as many as 11 notices during the course of appellate proceedings, but there was no compliance on the part of the assessee. The ld. CIT(A) dismissed the appeal of the assessee on the ground that assessee is not interested in prosecuting the appeal as no compliance was made by the assessee to the notices issued by the AO, and the assessment as framed by the AO was upheld by learned CIT(A).

4. Aggrieved ,the assessee filed second appeal before the Tribunal. None appeared on behalf of the assessee when this appeal was called for hearing before the Tribunal. The Ld. CIT-DR submitted that the assessee has claimed exempt income u/s 10(38) on the ground that STT was paid on the sale of shares on which long term capital gain was earned which was claimed to be exempt from income-tax , but however no evidences to substantiate the same was filed by the assessee. It was submitted by learned CIT-DR that the appellate orders passed by the ld. CIT(A) was an ex-parte appellate order. It was fairly submitted by the ld. CIT-DR that department has no objection if the matter can go back to the file of the AO for denovo assessment .

5. We have considered the contentions of the ld. CIT-DR and perused the material on record. We have observed from the statement of facts (SOF) filed by the assessee that the assessee has claimed exempt income u/s 10(38) on account of long term capital gain earned on sale of mutual funds/shares to the tune of Rs.1,15,995/- on the ground that assessee has paid STT, and the said long term capital gains is exempt from income-tax u/s 10(38). The assessee did not file complete details before the AO, which led to additions being made in the hands of the assessee by the AO to the tune of Rs. 1,15,995/- as income from other sources. The assessee filed first appeal with ld. CIT(A). We have observed that learned CIT(A) has passed an ex parte order. We have observed that the learned CIT(A) issued as many as 11 notices to the assessee, but there was no compliance on the part of the assessee. The ld. CIT(A) dismissed the appeal of the assessee ex-parte by passing a cryptic non speaking order, on the grounds that the assessee is not interested in prosecuting its appeal. We further observe that the ld. CIT(Appeals) is required and obligated to pass appellate order in compliance with the provisions of section 250(6), as ld CIT(A) is required to pass reasoned and speaking order on merits in accordance with law. The ld. CIT(A) has to state point for determination, his decision and reasoning thereof, which in the instant case has not been done. The ld. CIT(A) did not even call for the assessment records nor made any enquiry. Reference is drawn to provisions of Section 250(4). The ld. CIT(A) has been vested with vast substantial powers under the 1961 Act, which even include power of enhancement. The ld. CIT(A) is obligated to state point for determination, his decisions and reasoning thereof, as is required u/s 250(6). The assessee has claimed in statement of fact and grounds of appeal filed with ld. CIT(A) that the assessee earned long term capital gains on the

sale of shares on which STT was paid and the said LTCG was exempt from tax u/s 10(38). The assessee had participated in the assessment proceedings and filed details but as stated by the AO complete details could not be filed by the assessee to substantiate that long term capital gain is exempt from tax. The ld. CIT(A) did not make any enquiry to unravel the truth. Even assessment records were not called for by ld. CIT(A). The appellate order passed by ld. CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by ld. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority in chain of judicial heirarchy. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on merits of the issues are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and reasoning of ld. CIT(A) in deciding the issues. If the ld. CIT(A) simply dismiss the appeal merely because the assessee did not comply with the notices issued by ld. CIT(A) in limine without adjudicating issues arising in the appeal on merits , such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6) , and also higher appellate authorities will be deprived to see what weighed in the mind of the ld. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues on merits . The appellate order of the CIT(A) is clearly in violation of section 250(6) of the Act and liable to be set aside. Merely stating the assessment order passed by AO is upheld, and that the assessee has not submitted details/documents or that the assessee is not interested in prosecuting

its appeal, is not sufficient. The Id. CIT(A) is not toothless as his powers are co-terminus with the powers of the AO, which even includes power of enhancement. Further, We have also observed that the assessee has raised a legal ground that the assessment has been made u/s 153A in pursuance to search conducted by Revenue u/s 132 on 08.07.2011 , and there was no incriminating material found during the search , and hence assessment made u/s 153A is bad in law as the additions were made not on the basis of incriminating material found during the search. This legal issue goes to the root of matter and requires adjudication , which may requires investigation of facts. It is equally true that the assessee also did not complied with the notices issued by Id. CIT(A) and did not file the requisite details/documents to support her contentions. The AO has also stated in the assessment order that complete details were not filed by the assessee with respect to sale and purchase of shares/mutual funds. Thus, the assessee is equally responsible for its woes.. The claim and contentions of the assessee requires verification and enquiry, as well investigation of facts . The Id. CIT-DR also submitted before the Bench that the matter can go back to the file of the AO for denovo assessment. Under these circumstances and fairness to both the parties, in the interest of justice, the appellate order of CIT(A) as well of the AO are set aside and the matter can go back to the file of the AO for framing denovo assessment on merits in accordance with law after giving proper opportunity to the assessee. We clarify that we have not commented on the merits of the issues in the appeal. Thus, the matter is set aside and restored to the file of the AO for framing denovo assessment on merits in accordance with law, after giving proper opportunity to the assessee. The assessee is also directed to comply with notices issued by Id. AO during denovo assessment proceedings, otherwise, the AO shall be free to pass

denovo assessment on merits in accordance with law. The appeal of the assessee is , thus, allowed for statistical purposes. We order accordingly.

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

Order pronounced in the open court on 14.02.2025

Sd/-  
(Sudhir Kumar)  
JUDICIAL MEMBER

Sd/-  
(Ramit Kochar )  
ACCOUNTANT MEMBER

Dated 14.02.2025

PS: Rohit

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR