

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH (Virtual) JODHPUR**

**BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT AND
DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 111/Jodh/2024
(Assessment Year 2010-11)**

Ghanshyam Lal Dhakad, 1, Village Chhoti Bijoliyan, Bijoliyan, Bhilwara – 311062. PAN No. ADXPD8622K	Vs.	ITO, Ward-3, Bhilwara.
Assessee by	Shri Sunil Porwal, C.A.	
Revenue by	Shri Karni Dan, Addl. CIT-DR.	
Date of Hearing	01.05.2025.	
Date of Pronouncement	27 .05.2025.	

ORDER

PER DR. MITHA LAL MEENA, A.M.:

This Appeal by the assessee is directed against the order of National Faceless Appeal Central, Delhi (hereinafter referred to as “NFAC/CIT(A)”) dated 24.01.2025 in respect of assessment year 2010-11 challenging therein order passed by Ld. CIT(A) confirming addition of Rs. 23,58,700/- in the assessment order passed u/s 144 r.w.s.147 of the act.

2. The appellant has raised two issues in the grounds of appeal. Firstly, he challenged validity of the notice u/s 148 of the Act as bad in law and secondly not granted benefit of Peak Credit/Telescoping.



3. Heard both the sides and perused the material on record. We find that Id. CIT(A) has rejected the appeal of the assessee by stating that appellant did not respond to the notice of hearings before the AO and before him as well in filing the requisite documentary evidence in support of his claims. However, the Ld. AR submitted that the Ld. CIT(A) has not mentioned the correct facts and ignored the submission of the assessee. He pleaded that if he has been granted due opportunity with proper service of notice u/s 250 of the Act, to enable the assessee to present his submissions in defence of the claims made in the grounds of appeal, as he has good arguable case and he undertakes that he could substantiate the claims made in the grounds. In our view, inadequate opportunity certainly tantamount to violation of principles of natural justice and debarred the assessee to argue its case before the CIT (A) on merits.

3. From the record, we find that the Ld. CIT (A) although adjudicated the appeal on merits but he ought to have rebutted the submission of the appellant by granting adequate opportunity to the assessee and He deemed to have disproved the claim of the assessee by rebutting its contention with support of corroborative documentary evidence on record. The Hon'ble Supreme Court of India in the case of Tin Box Company vs. CIT reported in 249 ITR 216 in which their Lordships of Supreme Court of India observed as under:

“Assessment - Opportunity of being heard - Setting aside of assessment - Assessment order must be made after the assessee has been given reasonable opportunity of setting out his case - Same not done - Fact that the assessee could have placed evidence before the first appellate authority or before the Tribunal

is really of no consequence for it is assessment order that counts — Assessment order set aside and matter remanded to assessing authority for fresh consideration.”

4. Considering the principles of natural justice, it would be appropriate to restore the matter back to the file of the Id. CIT(A) to adjudicate the appeal of the assessee afresh by addressing the grounds of appeal on merit of the case after granting adequate opportunity of being heard to the assessee and considering the written submissions and documentary evidences filed on record and may be filed in the *de novo* appellate proceedings. In the case, the CIT (A) is not satisfied with the reply of the assessee, and he intends to take any adverse view against the appellant-assessee, then the assessee may be allowed an opportunity to rebut.
5. Accordingly, the impugned order is set aside and the matter is remanded back to the file of the Id. CIT(A)/NFAC to adjudicate the issue *de novo* in accordance with law.
6. In the result, this appeal is allowed for statistical purposes.

Order pronounced on...27.../...05...../2025 in the open Court.

Sd

(RAJPAL YADAV)
VICE PRESIDENT

Dated : 27.../...05/2025

Sd

(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

Copies to :

- (1) The appellant.
- (2) The respondent.
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

By Oder
Assistant Registrar,
Income Tax Appellate Tribunal,
Jodhpur Bench,
Jodhpur.