

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री ललित कुमार, न्यायिक सदस्य एवं श्री कृणवन्त सहाय, लेखा सदस्य
BEFORE: SHRI. LALIET KUMAR, JM & SHRI. KRINWANT SAHAY, AM

आयकर अपील सं. / ITA No. 645 /Chd/ 2025
निर्धारण वर्ष / Assessment Year : 2019-20

Smt. Ritu Dhingra 3349, Shakti Vihar, Haibowal Kalan, Ludhiana, Punjab-141001	बनाम	The DCIT, Central Circle-2 Ludhiana
स्थायी लेखा सं. / PAN NO: AIKPD8383M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA No. 862 /Chd/ 2025
निर्धारण वर्ष / Assessment Year : 2019-20

The ACIT, Central Circle-2 Ludhiana	बनाम	Smt. Ritu Dhingra 3349, Shakti Vihar, Haibowal Kalan, Ludhiana, Punjab-141001
स्थायी लेखा सं. / PAN NO: AIKPD8383M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Ashwani Kumar, C.A and
Ms. Deepali Aggarwal, C.A
राजस्व की ओर से/ Revenue by : Shri Rajat Kumar Kureel, CIT, DR

सुनवाई की तारीख/ Date of Hearing : 06/01/2026
उदघोषणा की तारीख/ Date of Pronouncement : 07/01/2026

आदेश/Order

PER LALIET KUMAR, J.M:

The present appeal filed by the Assessee and Cross Appeal filed by the Department against the order of the Ld. CIT(A)-5, Ludhiana dt. 26/03/2025 pertaining to Assessment Year 2019-20.

2. As the issues involved in the additional grounds of the assessee and the grounds raised by the Revenue are common and were heard together, both the appeals are disposed of by this consolidated order

3. Assessee has raised following grounds in its appeal:

1. That order passed u/s 250 of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals)-5 Ludhiana is against law and facts on the file in as much as Learned CIT (Appeal) was not justified to set aside the assessment to the file of the Learned Assessing Officer by invoking provisions of Section 251(1)(a) of the Income Tax Act, 1961 in as much as order passed by the Learned Assessing Officer was an order passed u/s 153C and not u/s 144.

2. That the Learned CIT(A) was not justified to arbitrarily come to the conclusion that assessment framed by the Learned Assessing Officer is u/s 144 and not u/s 153C.

3. That the Learned CIT(A) further gravely erred in not disposing off the following legal grounds raised by the appellant before him:-

(a) That the assessment order dated 31.03.2023 passed u/s 143(3) r.w.s. 153C is bad in law in as much no incriminating material was found suggesting any escapement of income at premises of Sh. Avtar Singh Kochhar.

(b) That the assessment order passed is non-est and bad in law in as much the proceedings have not been conducted in the manner prescribed by the Department instructions from time to time which are mandatory for compliance by the Learned Authorities particularly with respect to mentioning of DIN.

(c) That the assessment framed is bad in law in as much as approval given by the Ld. Additional CIT as required u/s 153D is applied without application of mind and is merely mechanical and ritualistic.

4. Besides the above, the assessee has raised an additional ground, which reads as under:

" That the order passed u/s 153C by the Learned Assessing Officer and upheld by the Learned Commission of Income Tax (Appeals) deserves to be quashed as provisions of Section 153C(3) of the Income Tax Act, 1961 are not complied with as the notice has been issued after 01.04.2021."

5. Revenue has raised following grounds in its appeal:

1. Whether upon facts and circumstances of the case, the Ld. CIT (A) has erred in setting aside the matter for making a fresh assessment as sufficient opportunity had been given to the assessee during the course of assessment proceedings in the case?

2. The appellant craves leave to add, amend, modify, vary, omit OR, substitute any of the aforesaid grounds of appeal at any time before OR at the time of hearing of the appeal.

6. Briefly, the facts of the case are that the assessee is an individual engaged in the business of export of garments. For A.Y. 2019-20, she filed her return of income declaring total income of Rs.15,30,520/-. A search and

seizure operation under section 132 of the Act was conducted on 06.02.2019 in the case of Kochar Group. During the said search, certain digital evidences were found which, according to the Department, pertained to the assessee. Based on such material, the Assessing Officer recorded satisfaction and initiated proceedings under section 153C of the Act. Notice under section 153C was issued, in response to which the assessee filed return declaring the same income as originally returned. The assessment was completed under section 153C read with section 143(3) of the Act.

6.1 The Assessing Officer observed that incriminating digital material and WhatsApp chats seized during the search in the case of Shri Avtar Singh Kochar indicated his involvement in arranging hawala transactions and bogus foreign remittances. Relying upon the statement of Shri Avtar Singh Kochar recorded under section 131(1A) and the seized digital evidence, the Assessing Officer held that the assessee was a beneficiary of ingenuine foreign remittances routed through M/s Dhanya General Trading FZE and M/s Tirupati Diam FZE. According to the Assessing Officer, the transaction details appearing in the seized material matched with the assessee's export invoices and bank credits. Since the assessee failed to satisfactorily explain the nature and source of the credits and did not produce supporting evidences to establish the genuineness of the transactions, the Assessing Officer treated the foreign remittances amounting to Rs.67,15,93,101/- as unexplained cash credits under section 68 of the Act and added the same to the total income of the assessee.

7. Against the order of the AO the assessee went in appeal before the Ld. CIT(A). The Ld. CIT(A) examined the facts of the case, the assessment order, and the submissions of the assessee. He observed that the proceedings under section 153C were initiated based on incriminating digital material seized during the search conducted in the case of Kochar Group, which clearly had a live nexus with the assessee. The Ld. CIT(A) held that the satisfaction recorded by the Assessing Officer was valid and in accordance with law and,

therefore, the initiation of proceedings under section 153C was justified. The Ld. CIT(A) noted that the Assessing Officer had relied upon seized WhatsApp chats, invoices and the sworn statement of Shri Avtar Singh Kochar, wherein he admitted to arranging foreign remittances through hawala channels for exporters, including the assessee. It was observed that the details of invoices and foreign remittances found in the seized digital material matched with the entries recorded in the books of the assessee.

7.1 The Ld. CIT(A) further observed that despite being afforded adequate opportunities, the assessee failed to rebut the incriminating material or disprove the statement of Shri Avtar Singh Kochar through cogent evidence.

7.2 The Ld. CIT(A) held that the assessee failed to establish the identity, creditworthiness and genuineness of the foreign entities from whom the credits were received. In the absence of supporting evidence such as purchase bills, transportation documents and independent confirmations, the explanation offered by the assessee was found to be unsatisfactory. Accordingly, the Ld. CIT(A) confirmed the action of the Assessing Officer in treating the foreign remittances amounting to Rs.67,15,93,101/- as unexplained cash credits under section 68 of the Act and dismissed the grounds raised by the assessee.

8. Against the order of the Ld. CIT(A) the assessee preferred in appeal before the Tribunal.

9. During the course of hearing the Ld. AR invited our attention to the assessment order passed by the Assessing Officer, wherein the assessment was framed under section 153C read with section 143(3) of the Act. It was submitted that the approval granted by the competent authority also clearly records that the assessment proceedings were under section 153C r.w.s. 143(3) and not under section 144 of the Act.

9.1 The Ld. AR further submitted that the Ld. CIT(A) proceeded on an erroneous assumption that the assessment was completed under section 144 of the Act and, on that basis, remanded the matter back to the file of the Assessing Officer. Our attention was specifically drawn to para 5.7 of the order of the Ld. CIT(A), wherein such an incorrect premise has been recorded, for reference the same is reproduced below:

5.7 It is observed that no proper compliance was made during the assessment proceedings and therefore, as discussed above, the assessment order was passed u/s.153 C r.w.s.144 of the Act. In my view, although the appellant has made non-compliance during assessment proceedings, as per principles of natural justice, one more opportunity of being heard needs to be granted. Under these facts and circumstances, and to meet the ends of justice, in my considered view, it would be appropriate if the impugned Assessment order is set aside to the file of AO so that submissions of the appellant can be considered by the AO, and a speaking order can be passed based on facts. Therefore, I set-aside the impugned assessment order to the file of AO for making a fresh assessment by invoking amended provisions of section 251(1)(a) which are reproduced as below:

*"251. (1) In disposing of an appeal, the [***] [Commissioner (Appeals)] shall have the following powers-*

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment:

[Provided that where such appeal is against an order of assessment made under section 144, he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment;]"

9.2 It was contended that the proceedings before the Assessing Officer were not ex parte, and therefore the Ld. CIT(A) had no power to remand the matter. The action of the Ld. CIT(A) was stated to be contrary to the provisions of section 251 of the Act, which obligates the appellate authority to adjudicate the issues on merits. Accordingly, it was prayed that the order passed by the Ld. CIT(A) be quashed.

10. Per contra, the Ld. DR, while responding to the submissions of the Ld. AR, fairly conceded that the assessment order was not passed under section 144 of the Act. He submitted that the assessment was framed under section 143(3) read with section 153C of the Act.

10.1 The Ld. DR thus supported the contention that the factual premise adopted by the Ld. CIT(A) for remanding the matter was incorrect.

11. We have heard the rival submissions and perused the material available on record. From the record, it is evident that the Assessing Officer passed the assessment order on 31.03.2023 under section 153C read with section 143(3) of the Act. The proceedings were, therefore, completed after due participation of the assessee and were not ex parte under section 144 of the Act.

11.1 In view of the above factual position, we find that the Ld. CIT(A) proceeded on an erroneous assumption that the assessment was framed under section 144 of the Act and, on that basis, remanded the matter back to the file of the Assessing Officer. Such an approach is contrary to the powers conferred upon the Ld. CIT(A) under section 251 of the Act, which does not permit remand of matters in cases where the assessment has been completed under section 143(3), except to the limited extent provided by law.

11.2 Since the Ld. CIT(A) has not adjudicated the issues on merits and has merely set aside the assessment on an incorrect understanding of facts and law. We are of the considered view that the order passed by the Ld. CIT(A) is not in accordance with the law. Accordingly, we have no hesitation in quashing the impugned order of the Ld. CIT(A).

11.3 However, as the issues raised by the assessee in the appeal before the Ld. CIT(A) have not been examined on merits; therefore, we deem it appropriate to restore the matter to the file of the Ld. CIT(A) with a direction to decide the issues on merits in accordance with the law.

11.4 Needless to say, the Ld. CIT(A) shall afford adequate opportunity of being heard to the assessee and shall pass a speaking order in accordance with law.

12. In the result, the appeal of the Assessee and cross appeal of the Department are allowed for statistical purposes.

Order pronounced in the open Court on 07/01/2026.

Sd/-

कृणवन्त सहाय
(KRINWANT SAHAY)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

ललित कुमार
(LALIET KUMAR)

न्यायिक सदस्य /JUDICIAL MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar