

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE,
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.2974/Del/2022
(ASSESSMENT YEAR 2016-17)**

Raj Kumar Chawla B-1/207, Janak Puri New Delhi-110 058 PAN-AAEPC 2079F	Vs.	Deputy Commissioner of Income Tax Central Circle-15 Delhi
(Appellant)		(Respondent)

Appellant by	Mr. Salil Kapoor, Advocate Mr. Amarbir Singh, CA and Mr. Sumit Lalchandani, Advocate
Respondent by	Mr. T. Kipgen, Commissioner of Income Tax, Departmental Representative ("CIT- DR" for short)

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Principal Commissioner of Income Tax (OSD)(Appeals)-26, New Delhi ["Ld. Pr.CIT (OSD)(A)", for short], dated 28/10/2022 for Assessment Year 2016-17. Grounds taken in this appeal are as under:

“1. That, in view of the facts and circumstances of the case and in law, the notice dated 02.02.2021 issued under Section 153C of the Income Tax Act, 1961 (‘herein referred as Act’) by the Assessing officer (‘AO’) is illegal, bad in law, barred by time limitation and without jurisdiction, hence, the said notice along with the assessment order dated 28.02.2022 passed under Section 153C r.w.s 143(3) of the Act are liable to be quashed.

2. That, in view of the facts and circumstances of the case and in law, AO has erred in completing the assessment and passing the assessment order dated 28.02.2022 under section 153C r.w.s 143(3) of the Act which is barred by time limitation.

3. That, in view of the facts and circumstances of the case and in law, the satisfaction note dated 02.02.2021 recorded under Section 153C of the Act is illegal and bad in law and, accordingly, the assessment proceedings initiated on the foundation of such satisfaction note and also the consequent assessment order passed are liable to be quashed.

4. That, in view of the facts and circumstances of the case and in law, the addition made while passing order under Section 153C of the Act is illegal, bad in law and without jurisdiction as the document, on basis of which the notice under Section 153C is issued does not belong to the Appellant and as such the proceedings initiated and order passed under Section 153C of the Act are illegal and bad in law.

5. That, in view of the facts and circumstances of the case and in law, the addition of Rs. 2,50,00,000/- made by the assessing officer under Section 69A of the Act on account of alleged unexplained money is erroneous, bad in law and without jurisdiction. The addition made is beyond the scope/jurisdiction of provisions of Section 153C read with section 15A of the Act.

6. That, in view of the facts and circumstances of the case and in law, the mandatory prerequisite conditions for invocation of Section 69 A of the Act has not been fulfilled in the instant case. Hence, the assessing officer has erred in making addition of Rs.2,50,00,000/- under Section 69A of the Act and therefore, the addition made by the AO is liable to be deleted.

7. That, in view of the facts and circumstances of the case and in law, AO has erred in not appreciating that photocopy of document does not constitute valid evidence in the eyes of law and as such the

addition made merely /solely on the basis of photocopy of document without determining the authenticity of the original document is bad in law.

8. That, the AO has failed to appreciate that the property referred to by the AO was never purchased by the Appellant and as such addition based on alleged purchase of property is illegal and bad in law.

9. That, in view of the facts and circumstances of the case and in law, the order of the CIT(A)-26 dated 28.10.2022 has been passed in haste without giving the Appellant reasonable opportunity to present its case and not providing him with the opportunity of personal hearing and hence, violating his rights/principles of Natural Justice and causing him great prejudice.

10. That, in view of the facts and circumstances of the case and in law, the alleged approval granted by Addl. CIT under Section 153D of the Act to pass the impugned assessment order is illegal, bad in law, mechanical and passed without valid approval is illegal and bad in law.

11. That, in view of the facts and circumstances of the case and in law, the addition of Rs.2,50,00,000/- is based on the surmises and conjectures and not supported by any evidence and material on record.

12. That the explanations given, evidence produced and material placed and made available on record have not been properly considered and judicially interpreted and the same do not justify the addition made.

13. That, in view of the facts and circumstances of the case and in law, the assessing officer has erred in charging interest under Section 234B and 234C of the Act. The interest has been wrongly and illegally charged and is also wrongly worked out.

14. That, in view of the facts and circumstances of the case and in law, the assessing officer has erred in initiating penalty proceedings under Section 271(1)(c) of the Act.

15. The Appellant craves leave to add, alter, modify or delete one or more grounds of appeal before or at the time of hearing.”

(B) In this case, the assessment order dated 28/02/2022 was passed by Assessing Officer (“AO”, for short) under section 153A r.w.s 143(3) of Income Tax Act, wherein the assessee’s total income was determined at Rs.2,67,10,970/-. The assessee’s appeal against the aforesaid assessment order was dismissed by the Ld. Pr. CIT (OSD)(A)-26 vide impugned appellate order dated 28/10/2022. The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 28/10/2022.

(B.1) At the time of hearing before us, the Ld. Counsel for the assessee submitted that in the course of appellate proceedings, in the office of the Ld. Pr.CIT(OSD)(A)-26, New Delhi; the assessee had filed written submissions which are reproduced in paragraph 6.1 of the aforesaid impugned appellate order dated 28/10/2022. The Ld. Counsel for the assessee drew our attention to the following portion of the aforesaid written submissions:

“17. The Assessee also prays for four weeks of additional time for filing of additional submissions/documentary evidences on legal and merit issues.

18. It is further prayed that in case your goodself wishes to take an adverse view, then following principles of natural justice, reasonable opportunity of being heard should be granted to the Assessee and a notice granting adequate opportunity of hearing be issued. Further, an opportunity of personal hearing may also be granted in the above mentioned matter.”

(B.2) The Ld. Counsel for the assessee further submitted that Ld. Pr. CIT(OSD)(A) did not provide sufficient opportunity for filing of additional submissions, documentary evidences requested by the assessee though the assessee had sought for four weeks of additional time in the aforesaid written submissions. He also submitted that although the assessee requested for personal hearing in the aforesaid written submission; the Ld. Pr. CIT(OSD)(A) did not grant personal hearing to the assessee. The Ld. Counsel for the assessee contended that the Ld. Pr. CIT(OSD)(A), by neither providing sufficient opportunity for filing written submissions nor granting personal hearing; failed to provide reasonable opportunity to the appellant assessee. The Ld. Counsel for the assessee made a prayer that impugned appellate order dated 28/10/2022 should be set aside and the issues in dispute should be restored to the file of the Ld. CIT(OSD)(A) for fresh order in accordance with law after providing reasonable opportunity to the assessee. The Ld. CIT-DR for Revenue was in agreement with the submissions made by the Ld. Counsel for the assessee; and expressed no objection to the

aforesaid prayer made on behalf of the assessee, by Ld. Counsel for the assessee.

(B.2.1) In view of the foregoing, in the specific facts and circumstances of the present appeal before us, and as representatives of both sides are in agreement with this, we set aside the impugned appellate order dated 28/10/2022 of the Ld. CIT(A) and restore all the issues in dispute to the file of the Assessing Officer with the direction to pass a *denovo* order in accordance with law after providing reasonable opportunity to the assessee. All grounds of appeal are treated as disposed off in accordance with aforesaid directions.

(C) For statistical purposes, this appeal is treated as partly allowed.

This order was orally pronounced in Open Court on 29/03/23 in the presence of representatives of both sides, after conclusion of the hearing and this order in writing is signed today on 10/04/2023.

Sd/- (CHALLA NAGENDRA PRASAD) JUDICIAL MEMBER	Sd/- (ANADEE NATH MISSHRA) ACCOUNTANT MEMBER
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Dated: 10/04/2023

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI