IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI

Before Sh. N. K. Saini, AM and Sh. Kuldip Singh, JM

ITA No. 294/Del/2014 : Asstt. Year : 2009-10

M/s Times Academy Ltd., C/o-M/s Vinod Kumar Bindal & Co., D-219, Vivek Vihar, Phase-I, New Delhi	Vs	Income Tax Officer, Ward-16(3), New Delhi
(APPELLANT)		**(RESPONDENT)**
PAN No. AACCT4547Q		

Assessee by : Sh. Vinod Kumar Bindal, CA
Revenue by : Sh. Shravan Gotru, Sr. DR

Date of Hearing : 11.07.2016		**Date of Pronouncement : 29.09.2016**

ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 14.01.2013 of ld. CIT(A)-XIX, New Delhi.

2. Following grounds have been raised in this appeal:

"1. The learned CIT(A) erred in law and on facts in confirming the disallowance of an amount of Rs. 2,28,49,560/- u/s 40(a)(ia) of the Act by not admitting the additional evidences placed on record ignoring the facts and circumstances of the case that the assessee could not produce those evidences during the assessment proceedings due to reasonable cause. Thus necessary directions should be given to admit the

additional evidences and then decide the case on merits.

2. Without prejudice to the ground no. 1, the CIT(A) erred in law and on facts in not restricting the amount of disallowance u/s 40(a)(ia) of the Act to the amount of expense outstanding as payable at the yearend. Thus necessary directions should be issued in this regard.

3. Without prejudice to the ground nos. 1 & 2, the CIT(A) erred in law and on facts in confirming the disallowance of rent of Rs. 85,11,920/- u/s 40a(ia) ignoring the fact that the total rent claimed in the profit and loss account was Rs. 67,51,019/- and the disallowance of rent could not exceed the amount claimed by the assessee. Thus the disallowance of rent, if at all to be made, should be restricted to Rs. 67,51,019/-.

4. Without prejudice to the ground no. 3, the CIT(A) erred in law and on facts in confirming disallowance of rent of Rs. 6,46,447/- u/s 40(a)(ia) of the Act though the said amount was not liable to tax deduction at source as per the provisions of the Act. Thus the disallowance of the said amount should be deleted.

5. The CIT(A) erred in law and on facts in confirming the disallowance of Rs. 1,18,80,250/- u/s 40(a)(ia) for contractual payments by considering wrong amount of TDS as not paid before due date ignoring the evidences placed on record to show that the disallowance for contractual payments could not exceed Rs. 31,99,155/-. Thus the disallowance, if at

all to be made, should be restricted to the amount of Rs. 31,99,155/- and the addition of balance amount should be deleted.

6. The CIT(A) erred in law and on facts in confirming the disallowance of interest of Rs. 12,67,280/- u/s 40(a)(ia) of the Act ignoring the fact that the total interest claimed in the profit and loss account was Rs. 12,30,395/-. Thus, the addition, if at all to be made, then of the excess amount of Rs. 36,885/- should be deleted.

7. The CIT(A) erred in law and on facts in not issuing directions to assessing officer to allow the said expenses of Rs. 2,28,49,560/- u/s 40(a)(ia) in the subsequent year when the tax deducted at source on such payments was deposited by the assessee in the exchequer of the government. Thus necessary directions should be given in this regard.

8. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing."

3. Facts of the care in brief are that the assessee filed the return of income on 31.03.2010 declaring an income of Rs.12,77,689/- on 31.03.2010 which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Later on, the case was selected for scrutiny. The AO during the course of assessment proceedings noticed that the

assessee had not tax deducted at source from the following expenses debited to the profit and loss account:

"1. Rent	*85,11,920/-*
2. Professional payment	*11,90,110/-*
3. Payment to contractors	*1,18,80,250/-*
4. Interest	*12,67,280/-*
Total (Rs.)	*2,28,49,560/-"*

4. He made the disallowance of the aforesaid amount by invoking the provisions of Section 40(a)(ia) of the Act. The AO also noticed that the assessee had not furnished the copies of the bill for acquisition of the assets viz., furniture, water treatment and aircondition. He made the addition of Rs.74,639/- which was the amount of depreciation claimed on the assets acquired during the year. The AO also noticed that the assessee had not paid fringe benefit tax on the following expenses:

"1. Tea and Refreshment	*78,262/-*
2. Staff Welfare	*37,713/-*
3. Communication expenses	*4,42,629/-*
4. Business promotion	*5,60,264/-*
5. Hotel Accommodation	*8,80,974/-*
Total (Rs.)	*20,01,842/-"*

5. He disallowed 20% of the aforesaid expenses and made the addition of Rs.4,00,367/-. Accordingly, the income was assessed at an income of Rs.2,26,34,755/-.

6. Being aggrieved the assessee carried the matter to the ld. CIT(A) and furnished the additional evidences in term of Rules 46A of the Income Tax Rules, 1962. However, the ld. CIT(A) did not admit the additional evidences by observing as under:

> *"2.2 Regarding this Ground, the appellant has filed an application for admission of additional evidence in terms of Rule 46A. The request for admission of additional evidence has been carefully considered but not found acceptable as none of the conditions laid down in Rule 46A have been fulfilled. In this case, the appellant repeatedly failed to comply with the notices issued fixing the appeal for hearing. Notices were issued on 18.9.12, 27.9.12 and 15.10.12 fixing the appeal for hearing. The appellant did not comply and even an adjournment application was not filed. These notices were sent by Speed Post at the addresses given in the Form No. 35 filed with the appeal. The appellant has not filed any Information regarding any change in address. Subsequently, notices were served on the Director of the assessee company through the Assessing Officer. Thereafter, on 7.11.12 and again on 14.12.12 and 21.12.12 the appellant sought time. It was only on the last date 8.1.13, when the appeal was fixed for final hearing that the appellant filed an application for admission of additional evidence under Rule 46A. No explanation was given regarding why the appellant waited for so long and filed the application only on the last date. In this case, the assessment order was passed on 30.12.2011 and the appeal was filed on 30.1.12, there was no reason why the appellant waited for nearly one year, before filing the application for admission of additional evidence.*

No explanation was given for this. Moreover, it was for the appellant to show that no opportunity was given during assessment proceedings. No evidence such as the date of notices, and particulars of hearings during assessment proceedings, was filed in support of the claim of no opportunity during assessment proceedings. The appellant has failed to show that any of the conditions enquired in Rule 46A have been fulfilled. In view of these facts, the additional evidence is not admitted."

7. The ld. CIT(A) confirmed the addition made by the AO.

8. Now the assessee is in appeal. The ld. Counsel for the assessee at the very outset stated that the additional evidences go to the root of the matter which were furnished before the ld. CIT(A) in terms of Rules 46A of the Income Tax Rules, 1962. However, those were not admitted and the additions made by the AO were sustained in arbitrary manner by the ld. CIT(A).

9. In his rival submissions the ld. DR supported the impugned order passed by the ld. CIT(A) and submitted that ample opportunities were given to the assessee by the AO during the course of assessment proceedings but the assessee time and again sought the adjournments and no reason was given for not filing the evidences before the AO, and that the assessee did not fulfill the conditions for admission of the additional evidence as mentioned in Rule 46A of the Income

Tax Rules, 1962. Therefore, the ld. CIT(A) was justified in not admitting the additional evidence.

10. We have considered the submissions of both the parties and perused the material available on the record. In the present case, nowhere it is mentioned by that ld. CIT(A) that any explanation was sought by him when additional evidence were furnished by the assessee. He himself mentioned in para 2.2 of the impugned order that the assessee sought time and when the case was fixed for hearing last time on 08.01.2013, the additional evidences were not furnished. The ld. CIT(A) did not admit the additional evidences without mentioning as to whether there was a reasonable cause for not producing those evidences before the AO or not. It is well settled that nobody should be condemned unheard as per the *maxim "audi alteram partem".* We, therefore, deem it appropriate to set aside this issue back to the file of the ld. CIT(A) to be adjudicated afresh after providing due and reasonable opportunity of being heard to the assessee. We also direct the assessee to explain the reason why the additional evidence which were furnished before the ld. CIT(A) could not be produced before the AO and not to seek undue or unwarranted adjournments.

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

(Order Pronounced in the Court on 29/09/2016)

Sd/-	**Sd/-**
(Kuldip Singh)	**(N. K. Saini)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 29/09/2016
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR