

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 6180/Del/2012  
Assessment Year: 2008-09**

ITO, WARD 33(2),  
ROOM NO. 206B, C.R. BLDG.,  
I.P. ESTATE, NEW DELHI

**(APPELLANT)**

VS. MR. SATYAKAM RAHUL  
4/2595, 1<sup>ST</sup> FLOOR,  
GURUDWARA ROAD,  
KAROL BAGH,  
NEW DELHI – 110 005  
(PAN: AGOPR1053J)

**(RESPONDENT)**

**AND**

**ITA NO. 6355/Del/2012  
Assessment Year: 2008-09**

MR. SATYAKAM RAHUL,  
17A/22, WEA  
AJMAL KHAN ROAD,  
KAROL BAGH,  
NEW DELHI – 110 005

**(APPELLANT)**

VS. ITO, WARD 33(2),  
NEW DELHI

**(RESPONDENT)**

Department by : SH.KAUSHLENDRA TIWARI, SR. DR  
Assessee by : SH. GURDEEP SINGH, ADV.

**ORDER**

**PER H.S. SIDHU, J.M.**

These are the Cross Appeals filed by the Assessee and Department against the order of the Ld. CIT(A)-XXVI, Delhi dated 24.9.2012 relating to assessment year 2008-09. Since the issues involved in these appeals are inter-connected and common, hence

the appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The Assessee has raised the following grounds:-

1. Because the Assessment order passed by the Ld. AO is wrong and illegal as the mandatory notice alleged to have been sent on 11.8.09 u/s 143(2) of the Income Tax Act was not served upon the assessee as the same was sent on the wrong addresses. Therefore, whole of the assessment proceedings are vitiated under the law.

2. Because the Id. Assessing Authority had no reason to issue notice u/s 143(2) of the Income Tax Act as the return of the assessee was processed u/s 143(1) of the Income Tax Act on 28.2.2010 after the date of issue of notice u/s 143(2) of the Income Tax Act i.e. 11.8.09, therefore, the proceedings are bad in law. There was no reason for selection under CASS without processing the return.

3. Because the Ld. CIT (A) did not consider the Ground no. 1 & Ground No.2 as the appellant was made to withdraw the Ground no. 1 & 2 at the time of passing of orders in the absence of counsel of the appellant, despite the copy of judgment of the Hon'ble Delhi High

Court, in ITA 1237/2007 decided on 2.1.2008 in the case of Commissioner of Income Tax -III, vs. Silver Streak Trading Pvt. Ltd filed by the counsel of the appellant at the time of submissions with details, documents on dt 30.11.11.

4. Because the main grounds no. 1 & 2 were not considered at all rather the appellant was made to withdraw these grounds by the Ld. CIT (A), on 17.9.12 in the absence of the counsel of the appellant, thus the order confirming the additions of Transport bills of Rs. 2872133/- & further confirming addition of Rs.45000/- u/s 40(a)(ia) of the Income Tax Act without considering the grounds no. 1 & 2 is illegal.

5. Because the Hon'ble CIT (A) has erred to perceive the details of transport charges which were incurred for hiring taxis etc. for the tourists 1 visitors for their site seeing. The Hon'ble CIT(A) failed to appreciate that the individual payments made hiring the taxis are mostly of the small nature i.e. less than Rs.20000/- which is the limit prescribed for deduction of IDS.

6. Because the Ld. AO has also erred to perceive the details of transport charges which were incurred for

hiring taxis etc. for the tourists visitors for their site seeing. The individual payments made for hiring the taxis are mostly of the small nature i.e. under the limit prescribed in the Act.

3. The Revenue has raised the following grounds:-

1. "Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 2,11,62,883/- made by the Assessing Officer u/s 40(a)(ia) on account of hotel bill payments for non deduction of the TDS as per provisions of section 194C of the I. T. Act.

2. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in restricting the disallowance to Rs. 45,000/- out of total disallowance of Rs. 1,05,900/- made by the Assessing Officer u/s 40(a)(ia) on account of professional charges for non deduction of the TDS as per provisions of section 194C of the I. T. Act.

3. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in admitting additional evidence without giving opportunity

to the AO as provided under Rule 46A of the Income Tax Rules, 1962.

4. The order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.

5. The appellant craves leave to add, alter or amend any / all the grounds of appeal before or during the course of hearing of the appeal.

4. We first deal with the Assessee's Appeal in the forgoing paragraphs.

5. The facts narrated by the Revenue Authority are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

6. At the time of hearing, Ld. Counsel of the assessee draw our attention towards the grounds of appeal raised before us vide ground no. 1 and 2 and stated that the assessee has challenged these legal issue before the Ld. CIT(A) and stated that the assessment order passed by the AO is wrong as the mandatory notice alleged to have been sent on 11.8.2009 u/s. 143(2) of the Act was not served upon the assessee as the same was sent on the wrong address. Therefore, the assessment are illegal and deserve to be cancelled. Further, Ld. Counsel of the assessee stated that the AO has no reason to issue notice u/s. 143(2) of the Act as the

return of the assessee was processed u/s.143(1) of the Act on 28.2.2010 after the date of issue of notice u/s. 143(2) of the Act i.e. 11.8.2009, therefore, the proceedings are bad in law. He stated that Ld. CIT(A) in the impugned order has stated that during the appellate proceedings the legal ground no. 1 and 2 were withdrawn. Therefore, the same were not adjudicated. He further stated that he himself appeared before the Ld. CIT(A) and has very much argued and pressed the legal ground no. 1 & 2, but the Ld. CIT(A) has wrongly stated that these facts and has not adjudicated the same, which is contrary to the law on facts on the file. In this behalf, Ld. Counsel of the assessee has filed his Affidavit before us and requested that the issue in dispute may be set aside to the file of the Ld. CIT(A) to decide these legal grounds, as per law, after giving adequate opportunity of being heard to the assessee.

5. On the contrary, Ld. DR has not raised any objection.

6. Keeping in view of the facts and circumstances of the present case and after perusing the order passed by the revenue authorities, especially the affidavit filed by the Assessee's Counsel, who appeared before the Ld. CIT(A), we are of the considered view that in the interest of justice, the legal ground no. 1 & 2 as stated above, requires to be adjudicated by the Ld. CIT(A). Therefore, we set aside the legal issues No. 1 & 2 to the file of the Ld. CIT(A) to

decide the same, after giving adequate opportunity of being heard to the assessee.

7. As regard the Revenue's Appeal is concerned, since we have set aside the legal issues to the Ld. CIT(A), involved in Assessee's Appeal, as aforesaid, hence, the issues involved in Revenue's Appeal also set aside to the file of the Ld.CIT(A) to decide the same accordingly.

8. In the result, Appeal filed by the Assessee as well as Revenue Stand allowed for statistical purposes.

Order pronounced in the Open Court on 28/09/2017.

**Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-**

**(H.S. SIDHU)  
JUDICIAL MEMBER**

Dated: 28/09/2017

**\*SR BHATNAGAR\***

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order,

**ASSISTANT REGISTRAR**