

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER
AND
SH. L. P. SAHU, ACCOUNTANT MEMBER
ITA No. 2424/Del/2016
(Assessment Year: 2011-12)**

Super Cassettes Industries Pvt. Ltd. Plot No. 1, Film Centre Sector-16A, Noida UP.	Vs	DCIT (TDS) Room No. 503, Ayakar Bhawan A-2D, Sector-24 Noida
GIR/PAN: AABCS4712P		
अपीलार्थी/(Appellant)		प्रत्यर्थी/(Respondent)

Assessee by : Sh. Hiren Mehta, CA
Department by : Sh. Anil Kr. Sharma, Sr. DR

Date of hearing : 16.11.2017
Date of pronouncement : 20.11.2017

ORDER

PER BHAVNESH SAINI, J.M:

1. This appeal by assessee has been directed against the order of Ld. CIT(A)-I, Noida, dated 29.02.2016 for assessment year 2011-12 u/s 201(1)/201(1A) of the IT Act on the following grounds.

1. *That on the facts and in the circumstances of the case and in law, the order passed by Ld. Commissioner of Income Tax, (Appeals) -1 is bad in law and contrary to the facts of the case.*
2. *That on the facts and circumstances of the case and in law, the order is void ab-initio being order was passed by the Ld. Commissioner of Income Tax (Appeals)-1 Noida, without giving proper opportunity to the assessee.*
3. *That on the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals)- 1 Noida, erred in confirming the addition treating "Bus Hiring charges "at par with the "Rent Paid for Plant & Machinery" thus misconstrued the provision and charged TDS @ 2% u/s 1941 of the Act, as this is a "Contract of service" not*

“Lease “and thereby working out a short deduction of Rs. 6,168/- alongwith consequential interest of Rs. 2,509/- u/s 201(1 A) aggregating to Rs. 8,677/-.

4. *That on the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals)- 1 Noida, erred in confirming the addition treating “AMC for maintenance of Computers with spares “at par with the “Professional services” thus misconstrued the provision and charged TDS @ 10% u/s 194J of the Act, as this is a “maintenance with spares ” not “Professional & Technical services “and thereby working out a short deduction of Rs. 1,84,225/- alongwith consequential interest of Rs. 66,321/- u/s 201(1 A) aggregating to Rs. 2,50,546/-.*

2. We have heard Ld. Representative of both the parties. Ld. Counsel for the assessee at the outset submitted that the order of the Ld. CIT(A) is void ab initio because it was passed without giving proper opportunity to the assessee. He has referred to the page 1 of the paper book which is adjournment application dated 05.02.2016 filed before Ld. CIT(A)-I, Noida, received on the same day having stamp of the office of Ld. CIT(A) in which he has prayed for adjournment after 10.03.2016. Ld. Counsel for the assessee submitted that after moving the application for adjournment, no notice have been served upon assessee and appeal has been decided on 29.02.2016 without giving opportunity of being heard to the assessee.

3. In view of the above, it is clear that when assessee requested for adjournment after 10.03.2016, Ld. CIT(A) should not have decided the appeal of the assessee prior to it on 29.02.2016, or he should have served another notice upon assessee to show his intention for disposal of the appeal prior to the date sought by the assessee. It, therefore, appears Ld. CIT(A) decided the appeal of the assessee without giving proper opportunity of being heard to the

assessee and thus violated principles of natural justice. The order of the Ld. CIT(A) cannot be sustained in law.

4. In view of the above, we set aside the order of the CIT(A)-I, Noida and restore the appeal of assessee to his file with directions to re-decide appeal of the assessee on merits by giving reason sufficient opportunity of being heard to the assessee.

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

Order pronounced in the open court on 20.11.2017.

Sd/-

(L. P. SAHU)
ACCOUNTANT MEMBER
Date: 20.11.2017
@m!t

sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER