

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. N. K. Saini, AM and Sh. K. N. Chary, JM

ITA No. 2892/Del/2016 : Asstt. Year : 2008-09

Puneet Pandey, C/o Raj Kumar & Associates, CAs, L-7A(LGF), South Ext., Part-2, New Delhi-110049	Vs	Income Tax Officer, Ward-2(3), Noida, U.P.
(APPELLANT)		(RESPONDENT)
PAN No. AMZPP0202G		

Assessee by : Sh. Raj Kumar, CA

Revenue by : Sh. Arun Kumar Yadav, Sr. DR

Date of Hearing : 14.12.2017

Date of Pronouncement : 18.12.2017

ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 31.03.2016 of Id. CIT(A)-I, Noida.

2. Following grounds have been raised in this appeal:ö

“1. That under facts and circumstances, Ld. CIT (A) grossly erred in law as well as on merits in dismissing the appeal as not - maintainable and consequently in not deciding the various grounds of appeal preferred before him.

2. That under the facts and circumstances, the Ld. AO committed grave error in treating the “prayer” made below grounds of appeal as the “grounds of appeal”, consequently erred in not adjudicating the grounds of appeal taken before him,

3. That under the facts and circumstances, Ld. AO grossly erred in law as well as on merits in disallowing Rs. 6,74,793/- u/s 40(a)(ia) being payment for clearing and forwarding expenses for alleged default of TDS u/s 194C of the Act.

4. That under the facts and circumstances, the Ld. AO grossly erred in law as well on merits in repeating the addition of Rs.8,04,916/- made by the AO in order u/s 143(3) dtd. 16.11.2010 by rejecting the books of accounts and by estimating the N.P. from business @16%.”

3. The main grievance of the assessee in this appeal relates to the dismissal of the appeal in *limine* by the Id. CIT(A).

4. Facts of the case in brief are that the assessee filed the return of income declaring an income of Rs.4,65,840/- on 29.09.2008. Later on, the case was selected for scrutiny and assessment was framed by the AO at an income of Rs.12,70,756/- by making an addition of Rs.8,04,916/-. Subsequently, the Id. CIT, Noida reviewed the assessment order u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) and directed the AO to consider the provisions of Section 40(a)(ia) of the Act on the payment of Rs.8,14,182/-. The AO made the addition of Rs.6,74,793/-

by making the disallowance on account of non-deduction of TDS u/s 194C of the Act.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) who dismissed the appeal in *limine* by observing in paras 3 & 4 of the impugned order as under:

õ3. The appellant has in its appeal memo prayed as under:

“The appellant-assessee prays that the relief as per grounds of appeal above may kindly be allowed to him and the learned Income Tax Authorities may please function with consistency and fairness. The appellant craves to add, amend, alter, change, substitute, vary or raise any additional grounds of appeal if it becomes necessary to do so in the interest of justice either at or before the date of hearing.”

4. The undersigned while exercising jurisdiction under 246A of I.T. Act, 1961 has no jurisdiction to do anything to make the income tax authorities function with consistency and fairness. For want of jurisdiction the prayer of the appellant cannot be granted. The appeal is dismissed as not maintainable.”

6. Now the assessee is in appeal. The Id. Counsel for the assessee drew our attention towards Form No. 35 furnished to the Id. CIT(A) and submitted that specific grounds challenging the additions made by the AO were raised

before the Id. CIT(A) and a prayer was made to allow the relief as per the grounds of appeal. However, the Id. CIT(A) only considered the prayer and held that he has no jurisdiction to do anything to the income tax authorities with consistency and fairness but did not consider the various grounds raised by the assessee.

7. In his rival submissions, the Id. DR although supported the orders of the authorities below but could not controvert the aforesaid contention of the Id. Counsel for the assessee.

8. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is noticed that the assessee raised 8 grounds before the Id. CIT(A) challenging the various additions made by the AO but those grounds were not considered and disposed off by the Id. CIT(A). We, therefore, deem it appropriate to set aside this case back to the file of the Id. CIT(A) to be decided afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee. It is made clear that the Id. CIT(A) shall decide the various grounds on merit after providing due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 18/12/2017)

Sd/-
(K. N. Chary)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 18/12/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR