

IN THE INCOME TAX APPELLATE TRIBUNAL  
 DELHI BENCHES "E" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
 AND  
 SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.1862 & 1771/Del./2016  
 Assessment Year 2008-2009

M/s. Vaishno Electricals Pvt. Ltd., KM-10, Near Partappur Police Station, Partapur, Delhi Road, Meerut. PAN AAACV6065F	VS	The ACIT, Circle-2 Meerut.
(Appellant)		(Respondent)

For Assessee :	Shri Abhishek Mathur, C.A.
For Revenue :	Ms. Shefali Swaroop, CIT-D.R.

Date of Hearing :	19.04.2018
Date of Pronouncement :	23.04.2018

**ORDER**

**PER BHAVNESH SAINI, J.M.**

Both the appeals by assessee are directed against the different orders of the Ld. CIT(A), Meerut, dated 16<sup>th</sup> February, 2016, for the A.Y. 2008-2009.

2. Briefly, the facts of the case are that in this case assessment was completed under section 143(3) on 13<sup>th</sup>

December, 2010, on a total income of Rs.1,36,810/- as against the returned income of Rs.1,11,810/-. The Ld. CIT, Meerut, invoked the jurisdiction under section 263 of the I.T. Act and vide order dated 28<sup>th</sup> March, 2013, partly revised the partly set aside the assessment order with certain directions. The A.O. in view of directions of the Ld. CIT, Meerut under section 263 of the I.T. Act, took-up the matter again and statutory notices were issued but not complied. Further, specific questionnaire were sent to the assessee which were also not complied with. Last opportunity was also given to the assessee to furnish the required details but no compliance have been made.

2.1. As regards the difference of Rs.6,21,295/- in the P & L A/c with reference to the TDS certificate of the assessee, the Ld. CIT, Meerut, directed to verify the actual quantum of difference in receipt and separately consider the allowability of expenditure, if any, against the same after affording proper opportunity to the assessee. No submissions have been made by the assessee. In the absence of any explanation from the

assessee, A.O. made addition of Rs.6,21,295/- and computed the total income of Rs.23,69,560/- vide order dated 07<sup>th</sup> March, 2014 under section 263/143(3) of the I.T. Act. Later on, A.O. noticed that while passing the order dated 07<sup>th</sup> March, 2014, addition of Rs.6,21,295/- was left to be included in the computation of income. It was a mistake apparent on record. Therefore, notice under section 154 of the I.T. Act was issued to the assessee for compliance, but, no reply or submissions have been filed by the assessee. The A.O. accordingly added an amount of Rs.6,21,295/- in the order dated 07<sup>th</sup> March, 2014 and computed the total income at Rs.29,90,855/-. The assessee challenged both the above orders dated 07<sup>th</sup> March, 2014 under section 263/143(3) and 154 dated 26<sup>th</sup> June, 2014 before Ld. CIT(A) separately.

2.2. The assessee as regards the order passed on dated 07<sup>th</sup> March, 2014, submitted before the Ld. CIT(A) that no notice have been served upon the assessee and order have been passed without giving proper opportunity of being heard to the

assessee and that levy of the tax and interest is arbitrary and excessive. The Ld. CIT(A) noted that it is an admitted fact that assessee did not challenge the order under section 263 of the I.T. Act which has attained finality. The assessee did not provide any material to show that notice have not been served upon the assessee. The Ld. CIT(A) held that A.O. passed the order after giving sufficient opportunity of being heard to the assessee. It is also noted that in the submissions filed later on before him, this ground has not been pressed. Therefore, this ground was dismissed.

2.3. As regards imposition of tax and interest, Ld. CIT(A) noted that nothing has been stated in this regard as to how the charging of tax and interest is wrong and unjustified. The appeal of assessee was accordingly dismissed.

2.4. As regards order under section 154 of the I.T. Act, assessee similarly submitted before Ld. CIT(A) that order have been passed without giving sufficient opportunity of being heard to the assessee. The Ld. CIT(A) noted that CIT under section 263

of the I.T. Act directed the A.O. to verify the actual quantum of difference of receipt, which order has become final. Since it was a mistake on record in not adding Rs.6,21,295/- in order dated 07.03.2014, therefore, it was correctly added in the order under section 154 of the I.T. Act. The Ld. CIT(A) also noted that in fact assessee challenged the findings given by Ld. CIT under section 263 of the I.T. Act, which assessee cannot do it in the present proceedings. The assessee was not demonstrated as to how the addition on merit was wrong. The appeal of assessee was accordingly dismissed.

2.5. Both appeals were dismissed.

3. After considering the rival submissions, we do not find any merit in both the appeals of the assessee. Learned Counsel for the Assessee merely contended that A.O. passed the impugned orders without giving sufficient opportunity of being heard to the assessee. However, he was not able to substantiate as to how the opportunity was not given to the assessee. The Ld. CIT(A) specifically noted in his findings that A.O. has given

sufficient opportunity of being heard to the assessee before passing the orders which have not been availed to by the assessee. Even in the paper book and submission filed before Ld. CIT(A), the assessee has not pressed this ground before Ld. CIT(A). Even on merits, assessee was not able to satisfy the Ld. CIT(A) as to how the charging of tax and interest was excessive or unreasonable. Since the A.O. could not include the amount of Rs.6,21,295/- in the order dated 07<sup>th</sup> March, 2014, therefore, it was correctly included and added while passing the order under section 154 of the I.T. Act being a mistake apparent from record. Learned Counsel for the Assessee merely contended that due to change in the management there were no compliance. However, it would not serve any purpose because the Ld. CIT(A) has given proper opportunity of being heard to the assessee at the appellate stage and it appears that assessee solely challenged the order under section 263 of the I.T. Act which was not within the powers of the Ld. CIT(A) because the order under section 263 could be challenged before the Tribunal only. In the instant case, since the assessee did not file any appeal against

the order under section 263 of the I.T. Act before the Tribunal, therefore, it has become final between the parties. Learned Counsel for the Assessee has not been able to point out as to how the additions made by the A.O. in the impugned order are unjustified. In the absence of any challenge and submissions raised on this point, we do not find any justification to interfere with the orders of the Ld. CIT(A). Considering the totality of the facts and circumstances of the case, no interference is called for in the matter. Both the appeals of the assessee are dismissed.

5. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open Court.

Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 23<sup>rd</sup> April, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'E' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.