

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “D”, NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No.5508/Del/2012
Assessment Year : 2007-08**

ITO, Ward- 36(4), New Delhi.	Vs.	Kamal Kumar, RA- 28D, SFS Flats, Pocket- D, Mayur Vihar, Phase – III, Delhi.
		PAN : AGQPK8658L
(Appellant)		(Respondent)

Department by : Shri Arun Kumar Yadav, Sr. DR
Assessee by : None
Date of hearing : 21-05-2018
Date of pronouncement : 31-05-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the Revenue is directed against the order dated 24.08.2012 of CIT(A)- XXVII, New Delhi relating to assessment year 2007-08.

2. This appeal was fixed for hearing a number of times and it was seen that the assessee was not at all appearing before the Tribunal for which notices were issued through the DR. It was further seen that on 28.11.2017, the counsel for the assessee appeared for the first time and requested for an adjournment for which the case was adjourned to 19.04.2018. Since the Bench did not function on that date the case was adjourned to 21.05.2018 by issuing separate notice to

the assessee. However, when the name of the assessee was called today i.e. on 21.05.2018 none appeared on behalf of the assessee nor any petition seeking adjournment of the case was filed. Under these circumstances, we proceed to decide the appeal on the basis of material available on record and after hearing the ld. DR.

3. Facts of the case, in brief, are that the assessee is a builder and filed his return of income on 02.11.2007 declaring total income of Rs.2,49,520/-. Since there was non-compliance from the side of the assessee by producing the books of account and other requisite details required by the Assessing Officer, the Assessing Officer completed the assessment on a total income of Rs.56,97,600/- by making various additions.

4. In appeal, the ld. CIT(A) on the basis of the remand report filed by the Assessing Officer deleted the various additions made by the Assessing Officer for which the Revenue is in appeal before the Tribunal by raising the following grounds :-

"1. "On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in deleting the addition of Rs.18,00,000/- on account of unconfirmed advances received in cash from three persons".

2. "On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in deleting the addition of Rs.23,31,034/- as assessee failed to reconcile the total credits in the two bank accounts viz-a-viz business receipts."

3. "On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in allowing disallowance of Rs.3,09,386/- made u/s 14A of the I.T. Act ignoring the facts that assessee advanced interest free advances of Rs.37,07,543/- and payments for interest bearing loans was made."

4. *"On the facts and in the circumstances of the case, the appellant craves leave to add, allow or amend any or all the grounds of appeal before or during the course of hearing of appeal."*

5. We have heard the Id. DR and perused the material available on record. So far as deletion of Rs.18,00,000/- on account of unconfirmed advances received in cash from three persons are concerned, we find the Assessing Officer made the addition on the ground that the confirmation letters filed by the assessee from three persons are hand written confirmations and the money was received in cash and none of the person was assessed to tax and no PAN has been provided. Further, the assessee has not produced the books of account. The assessee was unable to prove the capacity of the persons for giving such huge advances. No other details were filed for accepting the genuineness of such huge cash advances from the three persons. We find, before the Id. CIT(A), the assessee had submitted that he had taken advances from customers against sale of flats which are linked to the stage of construction. Certain confirmations were also filed before the CIT(A). Since all these details were not filed before the Assessing Officer despite giving number of opportunities which is discernable from the assessment order itself, therefore, we find merit in the argument of the Id. DR that the matter should be thoroughly investigated at the level of the Assessing Officer. It is an admitted fact that the power of the

Assessing Officer during the remand proceedings are limited. Since the assessee in the instant case has not at all cooperated with the Assessing Officer during the assessment proceeding by producing the requisite details for his verification, therefore, we deem it proper to restore this issue to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate his case with the relevant details to his satisfaction. The first ground raised by the Revenue is accordingly allowed for statistical purposes.

6. So far as the second ground is concerned, the same relates to deletion of Rs.23,31,034/-. We find the Assessing Officer made the above addition since the assessee was unable to reconcile the deposits in two bank accounts maintained with Bank of Baroda and Nainital Bank Ltd. We find the Id. CIT(A) deleted the addition on the ground that the assessee was able to reconcile the difference in the credits in the two bank accounts through cheques/DDs and amount of sales/turn over shown in the Profit & Loss Account. It is an admitted fact that the assessee had not appeared before the Assessing Officer along with books of account and never filed the relevant details as called for during the course of assessment proceedings. Although, the Id. CIT(A) was satisfied with the reconciliation filed by the assessee, however, the same in our opinion is not based on any sound logic. Considering the totality of the facts of the case, we

are of the opinion that the matter requires a re-look at the level of the Assessing Officer since the assessee had never produced the books of account either before the Assessing Officer or before the Id. CIT(A) so as to correctly reconcile the various credits in the bank account. Under these circumstances, we restore the matter to the file of the Assessing Officer with a direction to give an opportunity to the assessee to substantiate his case to the satisfaction of the Assessing Officer. The ground no.2 by the Revenue is accordingly allowed for statistical purposes.

7. So far as the third ground is concerned, we find the Assessing Officer disallowed an amount of Rs.3,09,386/- u/s 14A on the ground that the assessee had advanced loans and advances of Rs.37,07,543/- to various persons on which no interest has been received. We find the Id. CIT(A) allowed the claim of the assessee on the ground that the Assessing Officer has gone for net profit rate and, therefore, no further addition on account of disallowance u/s 14A is required. However, a perusal of the assessment order shows that the Assessing Officer has made specific addition/disallowance on account various items as per para 14 of the assessment order and he has not gone for net profit rate. This according to us is non-application of mind by the Id. CIT(A). We, therefore,

reverse the order of the Id. CIT(A) on this issue and the ground raised by the Revenue is allowed.

8. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

Order pronounced in the open Court on this 31st May, 2018.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 31-05-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi