

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA Nos. 1157 & 1158/Del/2018  
(Assessment Years: 2013-14 & 2014-15)**

Ram Binay Sharma 1/579, IInd Floor, Sector-1, Vaishali, Ghaziabad. <b>BAAPS4781B</b> <b>Appellant</b>	vs	ITO Ward 2(2), Ghaziabad <b>Respondent</b>
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<b>Appellant/ Assessee by</b>	<b>Sh. K. Sampath, Adv.</b>
<b>Respondent/ Revenue by</b>	<b>Sh. Atiq Ahmad, Sr. DR</b>

<b>Date of Hearing</b>	<b>11.06.2018</b>
<b>Date of Pronouncement</b>	<b>12.06.2018</b>

**ORDER**

**PER BENCH**

These two appeals are filed against the order dated 30.01.2018 passed by the Commissioner of Income Tax (Appeals) (hereinafter for short called as the "CIT (A)")-Ghaziabad for Assessment Years 2013-14 & 2014-15.

2. The Grounds of appeals are as under:

**ITA No. 1157/DEL/2018 (A.Y.2013-14)**

*"On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Assessing Officer in making addition of Rs.9,59,56,980/- by wrongly invoking provisions of 40(i)(ia) of the Income Tax Act, 1961. The action being erroneous and illegal must be quashed."*

**ITA No. 1158/DEL/2018 (A.Y.2014-15)**

*“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Assessing Officer in making addition of Rs.9,89,45,630/- by wrongly invoking provisions of 40(i)(ia) of the Income Tax Act, 1961. The action being erroneous and illegal must be quashed.”*

3. The facts are identical in both the Assessment Years, therefore, we are taking the facts of A.Y. 2013-14. The assessee filed the return of income electronically on 30.09.2013 declaring the income of Rs. 7,31,990/-. The case was selected under scrutiny through CASS. Notice u/s 143 (2) of the Income Tax Act, 1961 dated 03.09.2014 was issued and served on the assessee in time. Further notice u/s 142(1) of the Act along with the questionnaire dated 05.11.2015 was issued and served on the assessee. Other notices u/s 142(1) of the Act were issued from time to time. In compliance with this, the Chartered Accountant/Authorize Representative of the assessee appeared and discussed the case with the Assessing Officer. The assessee was asked to furnish the details/documents of other income shown in the ITR amounting to Rs. 9,59,56,980/- and details of other expense amounting to Rs. 97,84,832/-. The Assessing Officer observed that the assessee failed to produce the books of account for verification and examination. The assessee furnished his balance sheet and profit and loss account for A.Y. 2013-14 and it was noticed by the Assessing Officer that though the assessee made expenses of Rs. 9,59,56,980/- the assessee did not deduct any TDS during the year. In this regard, the assessee was given a show cause notice as regards the disallowance u/s 40(i)(ia) of the Act due to non-deduction of TDS. The Assessing Officer held that the assessee is engaged in the contract business of transporting the goods of the different transporters to different places through him by taking the vehicles of other parties who are engaged in the contract business with him and all the payments taken by the transporters by him and then given to the parties who are dealing in contract business of carrying goods to different places. The

Assessing Officer further held that the assessee has not taken any TAN No. and not furnished any TDS return and no TDS was made on the said amount, therefore, disallowed Rs. 9,59,56,980/- u/s 40(i)(ia) of the Act.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT (A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the CIT (A) was not correct in confirming the action of the Assessing Officer in making addition of Rs. 9,59,56,980/- by wrongly invoking provisions of Section 40(i)(ia) of the Act. The Ld. AR further submits that the Assessing Officer misunderstood the business of the assessee. In fact the assessee is the facilitator of the transport facility to the clients. The assessee simply arranged transport facility to assessee's clients from the transport holders either from the transport union or from the market available on that particular day and time. The Ld. AR submitted that normally drivers used to be on the move and transport owners communicate the assessee for the hiring business. The assessee only provides resources. The running and maintenance expenses of vehicle i.e. truck/trolley, driver's salary, insurance of vehicles and all other expenses related with the truck/trolley are borne by the trucks/trolley owners. Even loss or breakages of goods transported are borne by the truck/trolley owners. The Ld. AR further submitted that the assessee's expenses are its administration, office, salary or other expenses and his income was shown as commission charges. The same is evident from the amount debited and credited in profit and loss account as lorry hire income and expenses income. The Ld. AR submitted that payment or credit to transporter regarding TDS is not to be deductible if recipient furnished his PAN to deduct. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of CIT vs. Hardarshan Singh (2013) 350 ITR 427 (Del.), as well as the Ld. AR relied upon the Hon'ble Himachal Pradesh High Court decision in case of CIT vs. Ambhuja Darla Kashlog Mangu Transport Cooperative Society (2009) 227 CTR 299. The Ld. AR

further submits that the assessee has furnished certain documents before the CIT (A) but has failed to furnish the proper application under Rule 46A. Therefore, the Ld. AR submitted that the assessee should have been given opportunity of filing appropriate documents before the Revenue authorities.

6. The Ld. DR relied upon the Assessment Order and the order of the CIT (A). The Ld. DR further submitted that the CIT (A) rightly dismissed the appeal of the assessee, as the assessee has not furnished relevant documents before the Assessing Officer at the time of assessment proceedings.

7. We have heard both the parties and perused all the records. The CIT (A) held as under:

*“5.1 Ground no. 1: The assessee has challenged the addition of Rs. 9,59,56,980/- made by the AO on account of disallowance of alleged expense u/s 40(i)(ia) of the Act. During the course of appellate proceedings the assessee referred to provisions of section 194C(6) of the Act, claiming that assessee did not deduct tax during the course of business of hiring trucks on furnishing of permanent account of the persons to whom payment has been made. Examination of facts reveals that the assessee did not furnish details of payment made with PAN of each of the persons to whom payment has been made for verification by the AO. Even during appellate proceedings details have been furnished without making an application under Rule 46A. According to the provisions of section 194C(6) of the Act the assessee was to give PAN of the persons with whom assessee has made contracts for making payment. It is observed that assessee neither proves the relationship of the persons to whom payment has been made i.e. no copies of contracts was furnished by the assessee nor PAN was submitted during the course of assessment proceedings. Though no application under Rule 46A has been made by the assessee and the evidence otherwise cannot be admitted, yet the veracity of the documents produced has been examined. The assessee simply filed name, PAN and payment made to various persons without any substantiating evidence regarding the relationship of these persons with the assessee. Keeping in view above facts and position of law, this ground of appeal is rejected and the addition made by the AO is upheld.”*

From the perusal of the order of the CIT(A), it can be seen that the CIT (A) has not taken into account the additional evidence produced before the appellate authority only for the reason that the same was not furnished as per Rule

46A. It will be appropriate to allow the assessee to furnish the additional documents before the Assessing Officer for further verification and thereafter, the Assessing Officer can arrive at a proper conclusion. Therefore, the order of the CIT (A) is set aside and the issue is remanded back to the file of the Assessing Officer for fresh adjudication. The assessee be given an opportunity of producing all the supporting evidences asked by the Assessing Officer during the assessment proceedings by following principles of natural justice. The Assessing Officer may decide the issue as per fact and law. We hold and direct accordingly.

8. As regards appeal filed for A.Y. 2014-15, the factual aspects are similar to that of A.Y. 2013-14. Therefore, ITA No. 1158/DEL/2018 for A.Y. 2014-15 is also remanded back to the file of the Assessing Officer with the above directions.

9. In the result, both the appeals of the assessee are partly allowed for statistical purposes.

**Order pronounced in the open court on 12.06.2018**

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

Dated: 12.06.2018

\*Kavita Arora

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

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