

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 3743/Del/2016		
A.Y :2009-10		
SH. RAKESH KUMAR, C/O SH. RAVI GUPTA, ADVOCATE, E-6A, KAILASH COLONY, NEW DELHI - 110 048 (PAN: AXMPK7608P)	VS.	ITO, WARD 3(3), NEW DELHI
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. PC Yadav, None
Department by : Sh. B.S. Anant, Sr. Dr.

ORDER

The Assessee has filed this appeal against the order dated 01.3.2016 passed by the Ld. CIT(A), Ghaziabad relating to assessment year 2009-10 on the following grounds:-

- i) That on facts and circumstances of the case, the order passed by the Id. CIT(A) is bad both in the eyes of law and on facts.
- ii) That the Id. CIT(A) has erred in law and on facts in confirming the addition made by the AO of Rs. 9,52,041/- by invoking the provisions of section 40(a)(ia) rws 194H, which is not applicable on facts as well as at law.
- iii) That the Ld. CIT(A) has erred in law and on facts in confirming the addition of section 40(a)(ia) rws 194H ignoring the nature of business as well as nature of expenses.
- iv) That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

v) That the appellant crave leave to add/ alter any / all grounds of appeal before at the time of hearing of the appeal.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not being repeated here for the sake of brevity.

3. At the time of hearing, Sh. P.C. Yadav, Advocate/Ld. counsel for the assessee stated that Assessee has filed the Appeal before the Tribunal against the order dated 30.3.2014 passed by the Ld. CIT, Ghaziabad u/s. 263 of the I.T. Act, 1961 and the Tribunal has accepted the appeal of the Assessee by setting aside the revisional order passed u/s. 263 by the Id. CIT, Ghaziabad, vide its order dated 13.08.2018 in ITA No. 3386/Del/2014 (AY 2009-10). Hence, he submitted that the assessment order dated 05.01.2015 u/s. 263/143(3) of the I.T. Act, 1961 has become infructuous and may be quashed as such. He has filed the copy of the Tribunal's 'F' Bench order dated 13.8.2018 passed in ITA no. 3386/Del/2014 (AY 2009-10) in assessee's own case in which the Bench has held that assessment is not prejudicial to the interest of revenue. Since one of the limb of exercising jurisdiction u/s. 263 is missing, therefore, such revisional jurisdictional u/s. 263 cannot be sustained. In view of above, Ld. counsel for the assessee submitted that the appeal of the Assessee may be allowed by quashing the assessment order dated 05.1.2015.

4. On the other hand, Ld. DR has not produced any contrary evidence.

5. I have heard both the parties and perused the records, especially the impugned order as well as the ITAT order dated 13.8.2018. I find that Assessee has filed the Appeal before the Tribunal against the order dated 30.3.2014 passed by the Ld. CIT, Ghaziabad u/s. 263 of the I.T. Act, 1961 and the Tribunal has accepted the appeal of the Assessee by setting aside the revisional order passed u/s. 263 by the Id. CIT, Ghaziabad, vide its order dated 13.08.2018 in ITA No. 3386/Del/2014

(AY 2009-10). I further find that the Tribunal's 'F' Bench vide its order dated 13.8.2018 passed in ITA no. 3386/Del/2014 (AY 2009-10) in assessee's own case has held that assessment is not prejudicial to the interest of revenue. Since one of the limb of exercising jurisdiction u/s. 263 is missing, therefore, such revisional jurisdictional u/s. 263 cannot be sustained. Therefore, in my considered view, the assessment order dated 05.01.2015 u/s. 263/143(3) of the I.T. Act, 1961 has become infructuous and deserve to be quashed. I hold and direct accordingly.

6. In the result, the appeal of the assessee stands allowed.

Order pronounced on 29/10/2018.

**Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER**

Date 29/10/2018

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches

