

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

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER

**ITA No.-2867/Del/2018
(Assessment Year: 2008-09)**

Tyagi and Co., Panipat 08, Virk Nagar, Near St. Marry's Convent School, Asandha Road, Panipat PAN : AADFT6199E	vs	ITO, Ward-3 Panipat
Assessee by		Shri Venketesh Chaurasia, Adv.
Revenue by		Shri P.S.Thuingu Leny, Sr. DR

Date of Hearing	13.12.2018
Date of Pronouncement	17.12.2018

ORDER

PER N.S.SAINI, ACCOUNTANT MEMBER :

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-Karnal dated 03.01.2018 for assessment year 2008-09.

2. The assessee has raised following grounds of appeal :-

1. *On the facts and circumstances of the case, order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in passing the non speaking and laconic order.*
3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in sustaining the additions/disallowance of Rs.23,71,173/- made by the AO to the returned income of Rs.4,96,620/-.*

4. *On the facts and circumstances of the case, the additions/disallowances sustained by the CIT(A) are against the facts on record as well as against the statutory provisions of the Act.*
5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs. 1,00,000/- on account of adhoc disallowance from Diesel. Plant Rent and Repairs and Maintenance ignoring the facts and without bringing any adverse material.*
6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs. 61,840/- on account of bank charges.*
- 7(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs.8,90,000/- made by AO on account of unsecured loan.*
(ii) *That the abovesaid addition has been confirmed arbitrarily rejecting the explanation and evidences filed by the assessee to prove the identity and creditworthiness of the lender as well as genuineness of the transaction.*
- 8 (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs.9,51,635/- made by AO on account of advances given to vendors and suppliers.*
(ii)*That the abovesaid addition has been confirmed arbitrarily rejecting the explanation and evidences filed by the assessee to prove the genuineness of the transaction ignoring business of the assessee.*
- 9(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs. 1,15,150/- made by AO on account of payment made to material suppliers and for repairs and maintenance.*
(ii) *That the abovesaid addition has been confirmed arbitrarily rejecting the explanation and evidences filed by the assessee to prove the genuineness of the transaction ignoring business of the assessee.*
- 10(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs.1,50,000/-*

made by AO on account of fresh capital introduced by the partner.

(ii) That the abovesaid addition has been confirmed arbitrarily rejecting the explanation and evidences filed by the assessee to prove the genuineness of the transaction.

11(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs.52,548/- made by AO on account of Sec 40(a)(ia) payment made to security services.

(ii) That the abovesaid addition has been confirmed arbitrarily rejecting the explanation and evidences filed by the assessee to prove the genuineness of the transaction ignoring business of the assessee.

12. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs. 50,000/- on account of adhoc disallowance on account of non maintenance of stock register.”

2. At the outset, the Ld. Authorised Representative of the assessee Shri Venketesh Chaurasia, Adv. submitted that he has filed an application for admission of additional evidence before the Tribunal and submitted that the same should be admitted and the matter may be remanded back to the file of the Commissioner of Income Tax (Appeals) for adjudicating the appeal of the assessee afresh after taking into consideration the additional evidences now filed before the Tribunal but were not filed before the Commissioner of Income Tax.

3. The Ld. Departmental Representative, Shri P.S. Thuingu Leny, Sr. DR did not have any objection to the above submission of the Ld. Authorised Representative Shri Venketesh Chaurasia, Adv.

4. After considering the rival submission and perusing the materials on record. I find that the assessee has filed additional evidences in the paper book which are as under :-

<i>SL. No.</i>	<i>Particulars</i>	<i>Page No.</i>
1.	<i>Copy of Application under RTI Act, 2005 and other correspondence.</i>	<i>1-4</i>
2.	<i>Copy of ITR, Computation, BS & P&L, TAR</i>	<i>5-22</i>
3.	<i>Questionnaire issued by A.O</i>	<i>23-26</i>
4.	<i>Copy of Reply dated 10.06.2010</i>	<i>27-28</i>
5.	<i>Copy of Notice u/s 142(1) 10.08.2010</i>	<i>29</i>
6.	<i>Copy of Notice u/s 143(2) 20.08.2010</i>	<i>30</i>
7.	<i>Copy of Reply dated 27.08.2010</i>	<i>31-38</i>
8.	<i>Copy of Reply dated 11.10.2010</i>	<i>39</i>
9.	<i>Copy of Reply dated 19.10.201</i>	<i>40-44</i>
10.	<i>Copy of Reply dated 02.12.2010</i>	<i>45-59</i>
11.	<i>Copy of Reply dated 29.10.2010</i>	<i>60-61</i>
12.	<i>Letter from AO 12.11.2010</i>	<i>62-63</i>
13.	<i>Copy of Summon u/s 133(6) to J.P.Construction</i>	<i>64</i>
14.	<i>Copy of Summon u/s 133(6) to Gupta Construction</i>	<i>64-66</i>
15.	<i>Copy of Reply dated 07.12.2010</i>	<i>67-124</i>
16.	<i>Copy of Reply dated 13.12.2010</i>	<i>125-132</i>

5. I am of the considered opinion that in order to render substantial justice to the assessee one more opportunity should be granted to the assessee to file the additional evidences now filed before the Tribunal, before the Commissioner of Income Tax (Appeals) to consider the same and adjudicate the appeal of the assessee afresh. I, therefore, set aside the order of the Commissioner of Income Tax (Appeals) and remand the matter back to his file to adjudicate the appeal of the assessee afresh after considering the additional evidences. The assessee is also directed to file before the Commissioner of Income Tax (Appeals) the additional evidences filed before the Tribunal for his consideration and adjudication of his appeal afresh. The Commissioner of Income Tax (appeals) is directed to allow reasonable and sufficient opportunity of hearing to the assessee before adjudicating the

appeal of the assessee afresh. With these directions, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 17.12.2018

**Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER**

Dated: 17.12.2018

BR

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	13.12.2018
Date on which the typed draft is placed before the dictating Member	14.12.2018
Date on which the typed draft is placed before the Other Member	.12.2018
Date on which the approved draft comes to the Sr. PS/PS	17.12.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	17.12.2018
Date on which the fair order comes back to the Sr. PS/PS	.12.2018
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	

Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	