

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'G', NEW DELHI**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
AND
SHRI SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 1867/Del/2010
AY: 2006-07**

Shree Shyam Kamal Industries Pvt. Ltd., 207, Shyam Kamal Trade Centre, Agarwal Commercial Complex, Ville Parle East, Mumbai. PAN No. AAACS1045E	vs.	DCIT Circle 8(1) New Delhi.
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(Appellant)

(Respondent)

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**ITA No. 2463/Del/2010
AY: 2006-07**

ACIT Circle 8(1) Room No. 163, C.R. Building, New Delhi.	vs.	Shree Shyam Kamal Industries Pvt. Ltd., 207, Shyam Kamal Trade Centre, Agarwal Commercial Complex, Ville Parle East, Mumbai. PAN No. AAACS1045E
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(Appellant)

(Respondent)

Assessee by : Shri K.Sampath, Adv.

Sh. V.Raja Kumar, Adv.

Department by : Sh. Shailesh Kumar, Sr. DR

Date of Hearing : 10/12/2018

Date of Pronouncement: 12/12/2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present cross appeals have been filed by Revenue and Assessee against order dated 26/02/10 passed by Ld.CIT (A)-11, New

Delhi for assessment year 2006-07 on following grounds of appeal:

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1. "The Ld. CIT(A) has erred in law as well as on facts in upholding the short term capital gain (STT paid) of Rs. 5,44,596/- being profit on sale of shares as "Business Income". While doing so, the details/evidences furnished vide submissions dated 25.11.2008 with Assessing Officer has completely been disregarded. The arbitrary shifting of head of income has deprived the appellant company the benefit of lower tax rate @10% on short term capital gains u/s 111A of the Income Tax Act.
2. The Ld. CIT(A), has erred in sustaining the disallowance of Rs. 57,852/- as expenses attributable to earn dividend income of Rs.5,58,362/- u/s 14A read with Rule 8D of the Income Tax Act, without appreciating that the CBDT Notification No.45/2008 dated 24.03.2008 was effective from 01.04.2007 related to AY 2007-08 onwards and are not applicable for the instant assessment year.
3. That the Ld.CIT(A) has further erred on facts as well as in law in not allowing Gratuity of Rs.1,26,923/- paid and allowable u/s 43B of the Income Tax Act in the impugned assessment year by holding that on the face of order no disallowance has been made.
That the appellant craves to add/modify any additional ground/grounds at the time of hearing of appeal."

ITA No. 2463/del/2010

1. "Ld.CIT(A) erred, in law and on the facts and circumstances of the case, in deleting the disallowance of Rs.25,45,395/- made by the AO on account of expenses, without considering the remand report submitted by the AO and in violation of Rule 46A of the I.T. Rules.
2. Ld. CIT(A) erred, in law and on the facts and circumstances of the case, in holding that the cost of acquisition of land sold by the assessee during the year under consideration was Rs.82,59,311/- instead of Rs.20,00,000/- as taken by the AO.

3. *The appellant craves to amend, modify, alter, add or forego any ground of appeal at any time before or during the hearing of this appeal.*”

2. Brief facts of the case are as under:

Assessee filed its return of income on 29/11/06 declaring total income of Rs.1,26,37,017/-. The case was selected for scrutiny and notice under section 143(2)/142 (1) along with questionnaire was issued to assessee. In response to statutory notices, representatives of assessee appeared before Ld. AO and filed details.

2.1 Ld.AO observed that assessee was engaged in manufacturing of ink used in newspaper printings. It was also observed that assessee was also deriving income from house property. Ld. AO called for various details and completed the assessment under section 143 (3) of the act at an income of Rs. 2, 32, 26, 870/-by making following additions:

- i) disallowance of expenses debited
to P&L account -Rs. 25, 45, 395/-
- ii) addition on profit on sale of shares
held as business income -Rs. 5, 44, 596/-
- iii) disallowance under section 14 A -Rs. 57, 852/-

3. Aggrieved by the order of Ld. AO assessee preferred appeal before the Ld.CIT (A). Ld.CIT(A) partly granted relief to assessee.

4. Aggrieved by the order of Ld.CIT (A) both assessee as well as Revenue are in cross appeals before us.

5. At the outset, both parties submitted that, assessee vide letter dated 28/05/09 filed before the Ld.CIT(A), application for admitting of additional evidence under Rule 46 (A) of Income tax Rules, 1963. The said letter is placed at page 325 of paper book.

Thereafter, Ld.CIT(A) vide letter dated 02/06/09 forwarded evidences to Ld.AO for examining the same, and to furnish report on merits of issue under dispute. Reminder was sent on 24/07/09, by office of Ld.CIT (A), calling for remand report. Thereafter, Ld.AO vide letter dated 26/10/09 issued letter to assessee to appear in remand proceedings, and a copy of the same was sent to Ld.CIT (A), requesting matter to be kept in abeyance till remand report is sent.

5.1 It has been submitted that however in meanwhile Ld.CIT(A) in impugned order recorded that remand report has not been received. Ld.CIT(A) decided the issue in absence of remand report by presuming that Ld.AO has nothing to say in respect of issues raised by assessee.

5.2 Subsequently, remand report was sent by Ld.AO on 25/02/10 and in meanwhile Ld.CIT(A) passed impugned order on 26/02/10.

5.3 Both parties agree to the fact that Ld.CIT(A) did not have benefit of remand report, while passing impugned order.

6. We have perused submissions advanced by both sides in light of records placed before us.

7. Assessee, in application for admission of additional evidence before Ld.CIT (A) submitted that, no meaningful opportunity was provided by Ld.AO during assessment proceedings. It has also been submitted in letter dated 28/05/09 that, Assessing Officer did not afford any opportunity to adduce evidence relevant to grounds of appeal, before 1st appellate authority.

8. Further, Ld.CIT(A) in para 3.1 refers to final opportunity advanced to Ld.AO till 26/02/10 for submitting the remand

report. It is also observed that Ld.CIT (A) has neither commented upon application for reducing of additional evidence by assessee, nor has rejected the application. It is further observed that while deciding the issue Ld.CIT(A) has not considered remand report dated 25/02/10 by Ld.AO. We are, therefore, inclined to set aside appeal back to file of Ld. CIT (A) for reconsidering all issues in light of remand report dated 25/02/10 by Ld. AO.

Accordingly, grounds raised by revenue as well as assessee stands allowed for statistical purposes.

In the result appeals filed by revenue as well as assessee's stands allowed for statistical purposes.

Order pronounced in the open court on 12/12/2018

Sd/-

(N.S. SAINI)

ACCOUNTANT MEMBER

Dt. 12/12/2018

*Kavita Arora

Sd/-

(BEENA A PILLAI)

JUDICIAL MEMBER

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

		Date
1.	Draft dictated on	11/12/2018
2.	Draft placed before author	11/12
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	12/12
6.	Kept for pronouncement on	12/12
7.	File sent to the Bench Clerk and uploaded	12/12
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	