

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**(DELHI BENCH 'SMC' : NEW DELHI)**  
**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

ITA No. 164/Del/2017  
Assessment Year: 2012-13

PARTHAM MINERALS,  
C/O KARTAR SINGH KALSI,  
DE-85, SECOND FLOOR,  
TAGORE GARDEN,  
NEW DELHI – 110 027  
(PAN: AAIFP6992L)

VS. ITO, WARD 3(2)  
GURGAON

**(APPELLANT)**

**(RESPONDENT)**

Assessee by : Sh. Anil Chopra, Advocate  
Revenue by : Sh. SL Anuragi, Sr. DR.

**ORDER**

This appeal has been filed by the Assessee against the Order dated 08.9.2016 of the Ld. Commissioner of Income Tax (Appeals)-1, Gurgaon relevant to assessment year 2012-13.

2. The grounds raised in the appeal read as under:-

1. That on the facts and in the circumstances of the case, the AO has erred in law as well as on facts in making additions of Rs. 8,98,700/- on account of non-deduction of TDS on interest paid to NBFC, u/s. 40(a)(ia) of the I.T. Act, 1961 to taxable income of appellant. Since the appellant satisfies the conditions prescribed u/s 201(1) of Income Tax Act. The appellant should not be treated as

assessee in default and the interest paid without TDS should not be disallowed. But the appellant could not get opportunity of being heard and the fact could not be explained at assessment as well as first appeal level.

2. That the AO has erred in law as well as on facts in initiating penalty under the section 271(1)© of the Act.
3. The appellant craves leave to add, alter, modify or delete any of the ground mentioned above by the appellant.

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

4. During the hearing, Ld. counsel for the assessee, submitted that in the course of assessment proceedings u/s. 143(3) of the I.T. Act an amount of Rs. 8,98,700/- was disallowed on account of non-deduction of TDS on the interest paid to NBFC and the assessee was prevented to submit Form 26 in Annexure A at assessment proceedings u/s. 143(3) of the Act for AY 2012-13 as the AO asked for disallowance at the last stage of proceeding. It was further submitted that the time required for procuring the Form was not allowed and order against the firm was passed by making disallowance of Rs. 8,98,700/- on the account of non-deduction of

TDS on the interest paid to NBFC M/s L&T Finance Ltd. He further submitted that at first appeal which was filed on 17.4.2015, the assessee procured the Form immediately after the filing of appeal i.e. on 20.4.2015 and handed over the same to the Authorised Representative. However, due to bad health he could not present the documents. Finally the case was concluded when the letter fixing the date of hearing was returned unserved. Thus the due representation could not be made. But the assessee's intention has always been to cooperate with law. It was further submitted that the Ld. CIT(A) has erred in quoting that assessee is serious in perusing the appeal enough regarding the case and left the address mentioned in Form 35 without intimating about it. In reply, it was submitted that the assessee has not left the premises it is error on the part of postal department. Hence, he requested that an opportunity should be provided to the assessee and additional evidence should be accepted viz. *"(Annexure -A - Certificate of Accountant under first proviso to sub-section (1) of section 201 of the Income Tax Act, 1961 for certifying the furnishing of return of income, payment of tax etc. by the payee."* which is attached at page no. 8 to 12 of the submissions filed before the Tribunal.

5. On the other hand, Ld. DR strongly relied upon the orders of the authorities below.

6. I have heard both the parties and perused the records. I find that assessee was prevented to submit Form 26 in Annexure A at

assessment proceedings u/s. 143(3) of the Act for AY 2012-13 as the AO asked for disallowance at the last stage of proceeding and the time required for procuring the Form was not allowed and order against the firm was passed by making disallowance of Rs. 8,98,700/- on the account of non-deduction of TDS on the interest paid to NBFC M/s L&T Finance Ltd. I further considerable cogency in the contention of the Ld. Counsel for the assessee that while filing the appeal before the Ld. CIT(A) on 17.4.2015, the assessee procured the Form immediately after the filing of appeal i.e. on 20.4.2015 and handed over the same to its Authorised Representative. However, due to bad health he could not present the documents and finally the case was concluded when the letter fixing the date of hearing was returned unserved, hence, the due representation could not be made. In view of above, I am of the considered view that the additional evidences need to be admitted viz. "(Annexure -A - Certificate of Accountant under first proviso to sub-section (1) of section 201 of the Income Tax Act, 1961 for certifying the furnishing of return of income, payment of tax etc. by the payee." Accordingly, in the interest of justice, I admit the aforesaid additional evidences and directed the AO to decide the issue in dispute afresh, after considering the same and give adequate opportunity of being heard to the assessee. The Assessee is also directed to file these additional evidences before the Assessing

Officer to substantiate its claim and fully cooperate with him in the proceedings.

7. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced on 31-12-2018.

**Sd/-  
(H.S. SIDHU)  
JUDICIAL MEMBER**

**Dated : 31-12-2018**

SR BHATANGAR

**Copy forwarded to:**

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

AR, ITAT  
NEW DELHI.