

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

**BEFORE SHRI G.D.AGRAWAL, HON'BLE VICE PRESIDENT  
&  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.-4035/Del/2018  
(Assessment Year: 2014-15)**

Apache Labs Pvt. Ltd. 1023, Tower B-04, Spaze ITech, Sector-49, Sohna Road, Gurgaon PAN : AAKCA2691N	Vs.	Pr. CIT-1 Room No. 363A, C.R.Building, I.P.Estate, New Delhi
<b>Appellant</b>		<b>Respondent</b>

**Assessee by: Sh. Somnath Shukla, Adv.**

**Revenue by: Shri Aparna Karan, CIT(DR)**

<b>Date of Hearing</b>	<b>09.10.2018</b>
<b>Date of Pronouncement</b>	<b>07.01.2019</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, J.M.:**

This appeal is preferred by the assessee against order passed u/s 263 of the Income Tax Act, 1961 (hereinafter called the Act) vide order dated 30.03.2018 for assessment year 2014-15 wherein the Ld. Pr. Commissioner of Income Tax Act, New Delhi has held that the original assessment order passed u/s 143(3) of the Act on 30.08.2016 is erroneous in so far prejudicial to the interest of revenue as the Assessing officer had failed to disallow the assessee's claim of exemption amounting to Rs. 93,06,592/- made u/s 10AA of the Act.

2. The brief facts of the case are that during the year under consideration, the assessee company was engaged in the business of production and distribution of software defined high frequency radios serving commercial, institutional, government and amateur radio operators. The return for the year was filed declaring income at nil. In the return of income, the assessee had claimed exempt income of Rs. 93,06,592/- u/s 10AA of the Act.. Subsequently, on 21.03.2018 the Ld. Pr. Commissioner of Income Tax issued a show cause notice u/s 263 of the Act on the ground that the auditor's report in Form 56F for the purpose of claiming exemption u/s 10AA was not filed electronically by the assessee. The Ld. Pr. CIT referred to the amendment to Rule 12 of the Income Tax Rules, 1962, which had been amended with effect from 01.04.2013, wherein it had been provided that the said report in Form 56F had to be furnished in the electronic form. As the assessee had been not filed the report electronically, the Ld. Pr. CIT held that the AO's order allowing benefit of exemption was erroneous in so far as has being prejudicial to the interest of the revenue. Now, the assessee is before the ITAT and has challenged the order of the Ld. Pr. CIT passed u/s 263 wherein the original assessment order dated 30.08.2016 has been set aside with the direction to the Assessing Officer to disallow the assessee's claim of exemption u/s 10AA.

3. The Ld. Authorised Representative submitted that it is not the department's case that the claim of the assessee u/s 10AA of the Act was not examined by the Assessing Officer. He drew our attention to the query letter raised by the Assessing Officer in this regard and also the copy of the reply furnished before the Assessing officer in this regard. It was also submitted by the Ld. Authorised Representative that at the most it was a case of technical breach that Form 56F was not filed electronically. It was further submitted that Form 56F in manual form was duly produced before the Ld. Pr. CIT during the course of 263 proceedings but the Ld. Pr. CIT did not examine the veracity of the assessee's claim of exemption but proceeded to set aside the assessment order. It was also submitted that the Assessing officer also did not require the assessee to submit Form 56F at the time of the second round of assessment proceedings subsequent to the original assessment having been set aside. It was submitted that the 263 proceedings were bad in law inasmuch as it was only a technical breach and there was no failure on the part of the Assessing Officer to have examined the assessee's claim of exemption during the original assessment proceedings.

4. In response the Ld. CIT (DR) placed reliance on the order of revision passed by the Ld. Pr. CIT and submitted that ignorance of

law is no excuse and, therefore, the revision proceedings had rightly been initiated by the Ld. Pr. CIT.

5. On a query from the Bench, both the parties before us agreed that interest of justice would be served if the AO re-examines the claim of the assessee after duly considering the report in Form 56F.

6. Accordingly, in view the consent of both the parties, we restore this file to the office of the Assessing Officer with the direction to re-examine the assessee's claim u/s 10AA after duly taking into account the auditor's report in Form 56F after giving proper opportunity to the assessee to present its case. Thus, the order of the Ld. Pr. CIT stands modified in terms of our directions.

7. In the final result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 07.01.2019.

**Sd/-**  
**(G.D.AGRAWAL)**  
**VICE PRESIDENT**

**Sd/-**  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 07.01.2019

\*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