



IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW

BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.402/LKW/2018
Assessment Year: 2013-14

M/s Ashok Griha Udyog Kendra Private Limited 51/92, Shree Bhagwati Tower Naya Ganj, Kanpur	v.	ACIT-5 Kanpur
TAN/PAN:AABCA1684N		
(Appellant)		(Respondent)

Appellant by:	Shri Jagdish, Advocate		
Respondent by:	Shri C. K. Singh, D.R.		
Date of hearing:	16	05	2019
Date of pronouncement:	16	05	2019

ORDER

PER A. D. JAIN, V.P.:

This is assessee's appeal against the order of the Id. CIT(A)-I, Kanpur dated 23/3/2018 for assessment year 2013-14, taking the following grounds of appeal:-

- 1. BECAUSE ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE, THE LD. CIT (APPEALS) HAS ERRED IN CONFIRMING THE ADDITION OF RS.7,30,696/- MADE AS EXPENDITURE INCURRED IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME OF APPELLANT BY INVOKING THE PROVISIONS OF SECTION 14A OF THE INCOME TAX ACT, 1961 READ WITH RULE 8D OF THE I. T. RULES 1962, EVEN THOUGH THESE PROVISIONS ARE NOT APPLICABLE IN THE CASE OF APPELLANT.*
- 2. BECAUSE ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE, THE LD. CIT (APPEALS) HAS ERRED IN CONFIRMING THE ADDITION! DISALLOWANCE OF RS.9,18,359/- BEING 1/10th OF RS.91,83,586/- DEBITED UNDER HEAD OTHER EXPENSES IN THE PROFIT & LOSS ACCOUNT, MADE BY THE ASSESSING OFFICER ON AD HOC BASIS BY TREATING IT AS NON BUSINESS*

EXPENDITURES OF THE APPELLANT EVEN THOUGH THESE ARE BUSINESS EXPENSES.

3. BECAUSE ON THE FACTS AND IN THE CIRCUMSTANCES, IN ANY CASE AND WITHOUT PREJUDICE TO THE ABOVE GROUNDS, THE ADDITIONS! DISALLOWANCES MADE AS SUCH ARE TOO HIGH & EXCESSIVE.

4. BECAUSE ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE, THE LD. CIT (APPEALS) HAS ERRED IN CONFIRMING THE ADDITION! DISALLOWANCE OF RS.3,00,000/- MADE UNDER SECTION 40A (2)(b) OF THE I.T. ACT, 1961, IGNORING THE FACTS THAT THIS EXPENDITURE IS INCURRED WHOLLY & EXCLUSIVELY FOR THE PURPOSE OF BUSINESS AND NOT EXCESSIVE.

5. BECAUSE ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE, THE LD. CIT (APPEALS) HAS ERRED IN NOT GIVING DUE CONSIDERATION OF THE PRINCIPLE OF NATURAL JUSTICE BECAUSE REASONABLE OPPORTUNITY OF BEING HEARD HAS NOT BEEN PROVIDED TO THE APPELLANT.

6. BECAUSE ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE, THE SUBMISSIONS MADE BY THE APPELLANT BEFORE THE LEARNED ASSESSING OFFICER AND THE STATEMENT OF FACTS MAY BE CONSIDERED AS PART OF THESE GROUNDS OF APPEAL.

7. BECAUSE ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE, THE ORDER DATED 20.03.2018 PASSED BY THE LEARNED CIT (APPEALS) CONFIRMING THE IMPUGNED ADDITIONS / DISALLOWANCES BY DISMISSING THE APPEAL OF THE APPELLANT ARE ARBITRARY, UNJUSTIFIED AND BAD IN LAW, AND THEREFORE, DESERVE TO BE QUASHED.

& BECAUSE ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE, THE APPELLANT CRAVES LEAVE TO TAKE LIBERTY TO ADD, ALTER OR AMEND ANY GROUNDS /ADDITIONAL GROUNDS OF APPEAL BEFORE OR AT THE TIME OF HEARING OF APPEAL WITH THE KIND PERMISSION OF YOUR HONOUR.

2. By virtue of the impugned order, the Id. CIT(A) has dismissed the assessee's appeal for non prosecution, observing that the assessee

is not serious in pursuing the present appeal. We take note that the Id. CIT(A) had issued two notice dated 1/3/2017 and 20/9/2017, but none appeared on behalf of the assessee before the Id. CIT(A) and the Id. CIT(A) dismissed the appeal of the assessee ex-parte qua the assessee. Such service of notices has, however, been disputed by the assessee.

3. Heard. We find that the CIT(A) has dismissed the appeal without providing proper opportunity to the assessee. Moreover, he has not decided the appeal after discussing in detail, his reasons for agreeing with the assessment order. As such, another opportunity of hearing requires to be given to the assessee to represent his case fully before the Id. CIT(A). Even otherwise, it is trite [*S. Velu Palandar Vs. DCIT* 83 ITR 683 (Mad.) and *'Ms. Swati Pawa vs. Dy. CIT'*, 175 ITD 622 (Del)] and incumbent on the Id CIT(A) to decide an appeal on merit even in the absence of any representation before them.

4. In view of the above, the matter is remitted to the file of the Id. CIT(A) to be decided afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the assessee. The assessee, no doubt, shall cooperate in the fresh proceedings before the Id. CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

5. In the result, for statistical purposes, the appeal is treated as allowed.

Order pronounced in the open Court on 16/05/2019.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:16/05/2019
JJ:1605

Copy forwarded to:

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

By order

Assistant Registrar