

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'B', NEW DELHI)**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No:-1735 /Del/2014  
(Assessment Year: 2009-10)**

Dy. Commissioner of Income Tax, Circle – 3 (1) New Delhi	Vs.	M/s. Consulting Engineering Services (India) Pvt. Ltd. 57, Manjusha Building, 5 <sup>th</sup> Floor, Nehru Place, New Delhi - 110019
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No:-1444 /Del/2014  
(Assessment Year: 2009-10)**

M/s. Consulting Engineering Services (India) Pvt. Ltd., 3 <sup>rd</sup> Floor, Platinum Tower, 184, Udyog Vihar, Phase-I, Gurgaon- 122016 PAN AAACC5110G	Vs.	Assistant Commissioner of Income Tax Circle – 3 (1) New Delhi
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Appellant by** : Sh. Salil Kapoor, Advocate  
Ms. Soumya Singh, Advocate  
**Respondent by** : Ms. Nidhi Srivastava, CIT DR

**Date of Hearing** : 28.05.2019  
**Date of Pronouncement** : 29.05.2019

**ORDER****PER: N. K. BILLAIYA, AM**

ITA No.1444/Del/2014 and ITA 1735/Del/2014 are cross appeals by the assessee and the revenue preferred against the order of the CIT(A) -6, New Delhi dated 31.12.2013.

2. Both these appeals were heard together and are disposed off by this common order for the sake of convenience.

3. Assessee has raised twenty substantive grounds of appeal whereas revenue's appeal has only one substantive ground with sub grounds.

4. The assessee has also raised two additional grounds vide two applications dated 19.03.2015 and 04,01.2016. The additional grounds read as under :-

*"Additional Ground : 21 That the assessment order passed on 29.06.2012 is illegal, bad in law, without jurisdiction & barred by time limitation as the reference & order under section 142 (2 A) of the Act is illegal and bad in law."*

*Additional Ground : 22 That the assessment order passed dated 29.06.2012 for AY 2009- income 10 by the Additional commissioner of Income Tax ("Addl.CIT") is illegal, bad in law and without jurisdiction as the Addl. CIT had no jurisdiction to pass the said assessment order."*

5. Since the additional grounds go to the root of the matter we decided to proceed to adjudicate the additional grounds. The previous history of the appellate proceedings before us can be summarized by the following interim order of the Bench dated 25.04.2019 :-

*Present for the assessee : Shri Salil Kapoor, Advocate*

*Present for the Revenue : Ms. Nidhi Srivastava, CIT DR*

By moving two applications dated 19.03.2015 & 04.01.2016 in ITA No.1444/Del/2014 in assessee's appeal, Id. AR for the assessee sought to raise additional grounds which are as under

*"Additional Ground : 21 That the assessment order passed on 29.06.2012 is illegal, bad in law, without jurisdiction & barred by time limitation as the reference & order under section 142 (2 A) of the Act is illegal and bad in law."*

*Additional Ground : 22 That the assessment order passed dated 29.06.2012 for AY 2009-income 10 by the Additional Commissioner of Income Tax ("Addl. CIT") is illegal, bad in law and without jurisdiction as the Addl. CIT had no jurisdiction to pass the said assessment order."*

2. *Ld. AR for the assessee while opening up his argument on the additional grounds contended that the assessee has never produced the books of account during the assessment proceedings and the AO has passed the order u/s 142 (2A) without perusing the books of account nor such complexity of accounts has ever been pointed out. To repel this argument, Id. DR for the Revenue relied upon one letter dated 14.02.2011, available at page 1 of the paper book filed by the Revenue, wherein it is mentioned that the books of account were examined by the AO and complexity of the accounts have been observed and confronted to the assessee vide letter no. Addl. CIT/R-3/2011-12/1015 dated 21.11.2011. Operative part of the letter is extracted for ready perusal as under :*

*"On examination of the books of accounts and other details furnished during the course of assessment proceedings, it is seen that the accounts of the assessee are very complex and extremely difficult to interpret and hence, equally difficult to determine the*

*true and correct taxable income. The following paragraphs reflect the complexity of the accounts that have been observed and confronted to the assessee vide this office letter dated 21.11.11 as well as the reply of the assessee to these observations vide its letter dt.9.12.2011.*

3. *Ld. AR for the assessee relied upon order sheet entry dated 12.12.2011 which is as under :-*

*“ 12.12.2011 AR appeared and furnished copies of ST return for AY 2008-09 and 2009-10.*

*Also asked from AR, whether separate books of accounts/ records are maintained in respect of each project/ jobs. AR explained that no separate books of accounts are maintained, since as per the software adopted by the assessee the costs and expenses are directly allocable to each job, on the basis of project certificate (CASE HEARD).*

4. *Ld. DR for the Revenue further contended that vide questionnaire / letter dated 01.02.2011, AO has called upon the assessee to produce the books of accounts. But is it the case of the assessee that the books of account were never produced. Perusal of the assessment record shows that order sheet entry prior to 23.08.2011 is not available in record. We are of the considered view that without entry sheet entry dated 23.08.2011, the issue in controversy which entirely hinges upon the fact that if the books of account were produced by the assessee before the AO, it cannot be decided except with the assessment record including all order sheet entries prior to 23.08.2011 containing the facts as to issuance of the letter/ questionnaire dated 01.02.2011 and compliance thereof by the assessee.*

5. *SO, Ld. CIT DR is directed to produce the complete assessment record containing all order sheet entries prior to 23.08.2011 to prove the fact, if letter/ questionnaire dated 01.02.2011 was issued and was duly complied with by the assessee. In case order sheet entries are not readily available, the Revenue shall file remand report containing all the details of assessment proceedings right from the date of issuance of questionnaire/letter dated 01.02.2011 and the action taken thereon by the AO as well as assessee supported with affidavit. In the meanwhile, the case is adjourned to 28.05.2019. Copy of the order sheet be supplied to both the parties under Rules.*

*(KULDIP SINGH)*  
JUDICIAL MEMBER

*(R. K. PANDA)*  
ACCOUNTANT MEMBER

6. The revenue challenged the aforesaid interim order by way of writ petition before the Hon'ble High Court of Delhi. The Hon'ble High Court was pleased to dismiss the writ petition.

7. Before us the DR strongly objected to the admission of the additional ground. It is the say of the DR that the issues raised vide additional grounds were never raised before the lower authorities and, therefore, after a gap of three years the assessee should not be allowed to raise such issues before the Bench.

8. The counsel for the assessee vehemently stated that the issues raised vide additional grounds challenge the jurisdiction of the Assessing Officer and therefore, the same should be admitted for adjudication.

9. We find that on identical set of facts in A. Y.2008-09 the Tribunal refused to entertain the additional ground and the matter travelled upto the Hon'ble High Court and the Hon'ble High court directed the Tribunal to admit the additional ground and adjudicate the same.

10. In the light of the previous history of the assessee and considering the directions of the Hon'ble High Court in A. Y. 2008-09 the additional grounds are admitted.

11. We have already exhibited the interim order of the bench. However, even today the revenue could not furnish any order u/s. 127 of the Act. Moreover, the DR could only submit the order u/s. 120 (4) (b) of the Act and showed her inability to furnish the order sheet entries prior to 23.08.2011 though the assessment records were produced for inspection.

12. Though in the assessment order the Assessing Officer from page 1 to page 4 of his order has narrated the proceedings related to the special audit u/s. 142 (2A) of the Act and has also referred to the objections raised by the assessee to audit u/s. 142 (2A) of the Act but nowhere we find that the assessee was given a sufficient opportunity to the assessee to file a reply and thereafter did not grant any opportunity of being heard. We find that the Hon'ble Delhi High Court of Punjab & Haryana in the case of Isolux Corsan India Engineering & Construction (P.) Ltd. reported in 287 CTR 92 has held "the expression the reasonable opportunity of being heard" inhere an obligation to afford a reasonable opportunity of being heard. The mere calling upon the assessee to file a reply would not fulfill the preemptory condition set out in the first proviso to Section 142 (2A) of the Act. The grant of a reasonable opportunity of being heard, is a statutory pre condition to the exercise of power u/s. 142 (2A) of the Act, and if an Assessing Officer fails afford a reasonable opportunity of being heard,

before passing an order u/s. 142 (2A) of the Act, such an order would be null and void.

13. At the same time, the objections raised by the DR could not be brushed aside lightly since the assessee got ample opportunity to raise the objections during the assessment proceedings and also before the first appellate authority.

14. Be that as it may, to put an end to the ongoing litigation, with the consent of the representative of both the sides we deem it fit to restore the entire assessment to the files of the Assessing Officer. The Assessing Officer is directed to frame denovo assessment. The Assessing Officer is at liberty to proceed as per the provisions of law but after giving a reasonable opportunity of being heard to the assessee.

15. The assessee is also at liberty to raise any objections as per the provisions of law.

16. In the interest of justice and fair play both these appeals are allowed for statistical purposes.

Order pronounced in the open court on 29.05.2019.

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

Dated: 29.05.2019  
Neha

Sd/-  
**(N.K.BILLAIYA)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	28.05.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	29.05.2019
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	