

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'A' NEW DELHI

BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER  
AND SHRI MAHARISHI PRASHANT, ACCOUNTANT MEMBER

ITA No. 4682/Del/2016  
AY: 2012-13

AGS Retail P Ltd. Plot No.1 Local Shopping Centre Sharda Niketan Pitampura New Delhi 110 034  PAN: AAHCA3643H	vs.	ACIT Central Circle-9 New Delhi
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(Appellant)

(Respondent)

**Assessee by** : Sh. Rajeshwar Prashad Painuly, C.A.  
**Department by** : Sh. S.N.Pandey, Sr. D.R.

**Date of Hearing** : 13/05/2019

**Date of Pronouncement**: 30/05/2019

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against order of Ld.CIT(A)-25, Delhi dated 24.06.2016 for A.Y. 2012-13 on following grounds of appeal.

*"1. The learned CIT (A) erred in law and on facts in dismissing the appeal against the order of assessing officer without giving the adequate opportunity to the appellant. Thus, order of the learned CIT (A), passed merely on surmises and conjecture should be reversed.*

*2. The learned CIT (A) erred in law and on facts in dismissing the appeal against the order of assessing officer and confirming the addition of Rs. 9,84,527/- u/s section 43 B arbitrarily despite the fact that these liabilities were not claimed as expense in the profit & loss Account. Moreover, no incriminating documents were found during the course of search. The addition was made purely on presumptive basis. Thus, order of the learned CIT (A), passed merely on surmises and conjecture should be reversed.*

*3. The learned CIT (A) erred in law and on facts in dismissing the appeal against the order of assessing officer and confirming the addition of Rs. 11,03,000/- by treating genuine sales of appellant as bogus expenditure arbitrarily despite the fact that complete details of transactions were provided to the assessing officer. Moreover, no incriminating documents were found during the course of search and in respect of which no proceedings were abated. The addition was made purely on presumptive basis. Thus, order of the learned CIT (A), passed merely on surmises and conjecture should be reversed.*

*4. The learned CIT (A) erred in law and on facts in rejecting the ground of the appellant on non-applicability of provisions of Section 234B of the Income Tax Act despite the fact that said provisions are not applicable. Thus, order of the learned CIT(A), passed merely on surmises and conjecture should be reversed.*

*5. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing."*

2. Brief facts of the case are as under:

Assessee belongs to Aerens Group. A search and seizure and survey operation under section 132/133A of the Income Tax Act, 1961 was conducted in case of group at various residential and business premises. Case of assessee was accordingly centralised and jurisdiction was transferred to Central Circle. Subsequently notice u/s 143(2) was issued, in response to which assessee filed its return of income declaring sum of Rs.1,19,040/-. Thereafter notice u/s 142(1) along with questionnaire was issued to assessee in response to which representative of assessee appeared before Ld.AO and filed requisite details/information.

**2.1.** Ld.AO observed that assessee has shown following liabilities:

Service tax payable-Rs.7,84,353/-

TDS payable Rs.2,00,174/-

**2.2.** Ld.AO observed that, though these payments were filed before filing of return, there was no evidence on record to show that these were paid and therefore he added said sum u/s 43B of the Act in the hands of assessee.

**2.3.** During further course of assessment proceeding, Ld.AO called upon assessee to substantiate invoices raised amounting to Rs.11,03,000/-, for payment to M/s. PCIL Ltd.

**2.4.** Assessee filed various details, however, Ld.AO was of opinion that assessee had booked bogus expenditure and disallowed said sum in hands of assessee.

**3.** Aggrieved by order of Ld.AO, assessee preferred appeal before Ld.CIT (A) who upheld view of Ld.AO.

3.1. Aggrieved by order passed by Ld.CIT(A), assessee is in appeal before us now.

4. **Ground No. 1** raised by assessee is general in nature and therefore do not require any adjudication.

5. **Ground No. 2** is in respect of addition of Rs.9,84,527/- u/s 43B of the Act.

5.1. Ld.AR submitted that assessee has complete details in respect of payments made to Service Tax Department and TDS deducted which can be subject to verification.

5.2. Ld.DR did not object for issue being set aside for verification of payments made by assessee towards Service tax.

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

7. It is observed that Ld.AO has recorded finding that payments has been made before date of filing of returns, however, for want of evidence, same was added in hands of assessee. Now that assessee has submitted to have complete details in respect of service tax paid and TDS deducted, we are inclined to set aside this issue back to Ld.AO for verification. Ld.AO shall verify payments made by assessee and allow assessee's claim as per law.

**Accordingly these grounds raised by assessee stands allowed for statistical purposes.**

**8. Ground No. 3** is in respect of addition of Rs.11,03,000/- while treating it as bogus expenditure.

**8.1.** Ld.AR submitted that assessee raised invoice dated 01/06/11 for Rs.11,03,000/-, as advertisement charges for display on malls/shops in name of PCI Ltd. He submitted that assessee earned income and paid taxes thereon. Ld.AR submitted that before authorities below assessee filed form 26 A-S reflecting TDS deducted by PCI Ltd., on such amount. It has thus been submitted by Ld.AR that amount has been treated as actual receipts in hands of assessee.

**8.2.** On the contrary Ld.DR placed reliance upon orders of authorities below and submitted that assessee failed to explain by way of any documents in support of claim.

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

**9.1.** It is pertinent to note that alleged sum of Rs.11,03,000/-, has been treated as income by assessee on which due taxes has been paid. However, authorities below have made an addition in hands of assessee by treating it as bogus expenditure. We fail to appreciate this contradiction as from admitted facts, invoice has

been raised by assessee on PCI Ltd against services rendered by assessee and therefore allegation of authorities below of said sum being bogus expenditure cannot be sustained.

9.2. We are therefore of considered opinion that, this addition deserves to be deleted at the outset, as Ld.AO has not applied his mind while considering this issue.

**Accordingly this ground raised by assessee stands allowed.**

**10. In the result appeal filed by assessee stands allowed as indicated above.**

Order pronounced in the open court on 30/05/2019.

*Sd/-*

**(MAHARISHI PRASHANT)  
ACCOUNTANT MEMBER**

Dt. 30/05/2019.

*Sd/-*

**(BEENA A PILLAI)  
JUDICIAL MEMBER**

\*GMV

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
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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	