

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'G', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri B.R.R. Kumar, Accountant Member**

**ITA No. 5697/Del/2014
Assessment Year: 2010-11**

Skylark Securitas Pvt. Ltd., 1/84, First Floor, Sadar Baar, Deli Cantt. New Delhi. PAN-AAHCS2358H (Appellant)	vs.	DCIT, Circle 8(1), New Delhi (Respondent)
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Appellant by	None
Respondent by	Sh. N.K. Bansal, Sr. DR

Date of Hearing	11.06.2019
Date of Pronouncement	11 .06.2019

ORDER

Per B.R.R. Kumar, A.M.:

This appeal has been filed with a delay of 28 days. An affidavit has been submitted by the assessee that he has received the order of Id. CIT(A) on 25.07.2014 and also that he could not attend the proceedings before the Id. CIT(A), as no notice was received by him. Further, the Id. counsel for the assessee has filed an affidavit affirming that the appeal before the Tribunal could not be filed in due time owing to tax audit and his own ill health. Keeping in view, the affidavit filed by the assessee and Id. AR since there was a reasonable cause for late filing, the delay is hereby condoned.

2. in the ITAT , during the hearing held on 01.04.2019, the case was adjourned to 11.06.2019 at the request of the Id. AR. Records reveal that the

Ld.AR has duly noted the next date of hearing. On the designated date, no one appeared on behalf of the assessee nor was any letter of adjournment filed. Hence, it was decided to adjudicate the matter on merits taking into consideration the facts available on records. As per the records, we find that the assessee didn't not attend the hearing even before the Id. CIT(A) and the Ld.CIT(A) has passed order after due deliberation the issued involved.

The grounds taken by the assessee before us are as under :

1. *That on the facts and in the circumstances of the case, the Id. CIT (Appeals) has erred in confirming the Taxable Income at Rs.1,83,40,010 without giving an appropriate opportunity of being heard.*
2. *That observation of the learned CIT (Appeal) that none of the notices were complied with is without basis as the assessee never received any of the notices.*
3. *That the learned CIT (Appeal) instead of sending the Appeal Order by post chose to deliver the same to the counsel of the Assessee CA Lalit Ahuja after contacting him through phone. This clearly establishes that even learned CIT (Appeal) realized that there was problem in mail. The learned CIT (Appeal) thus erred in not following the same practice for fixing the hearing.*
4. *That learned CIT (Appeal) erred in law and on facts in deciding the appeal even on merit as he did not factor in the submissions made before learned AO and grounds of appeal as is evident from the order where no reference has been made to the assessment records.*
5. *That learned CIT Appeal failed to appreciate that the expenditure for increase in capital was to enter into new line of business which was submitted vide letter dated 15.2.2013 and is there on assessment record and thus erred in law and on facts in confirming addition on this account.*

6. *That learned CIT Appeal erred in law by neither providing an opportunity of being heard nor calling for the assessment records where the appellant had provided the necessary evidence as regards Rs. 15 lac cash invested by the MD of the Company and not even considering the fact that the appellant had discharged its duty by getting confirmation from the investor (MD of the Company) who is a assessee in his own right and is being assessed to tax regularly and thus erred in law and on facts in confirming addition on this account as well.*

7. *That the learned CIT Appeal erred in law and on facts by considering imprest payments as expenditures in confirming the addition of Rs. 1,81,100.*

8. *That the additions of Rs.35,83,705/- made without providing an opportunity of being heard and even without taking the facts on records into consideration are bad in law and be deleted.*

9. *That without prejudice to the ground of appeal No. 8, the order appealed against being bad in law be set aside."*

Addition of Rs.1,81,100/- u/s. 40A(3):

3. From the records we find that the assessee has made cash expenditure exceeding Rs.20,000/- amounting to total payment of Rs.1,81,100/-. These payments were found to be not exempt under Rule 6DD of the Income-tax Rules, 1962. Since no explanation could be offered by the assessee as to the urgency of incurring such expenditure on account of business promotion expenses, in the absence of any justification, we hereby confirm the addition made by the Assessing Officer which in consonance with the provisions of Section 40A(3) and decline to interfere in the order of the Id. CIT(A) on this grounds.

Addition of Rs.15,00,000/- Cash credit.

4. An amount of Rs.15 lakhs was introduced in cash by the Managing Director of the Company. The assessee could not file any details as to how the amounts have been received by the Managing Director and has not discharged even the primary onus to prove the source of the funds. The Id. CIT(A) held that the assessee has failed to comply to any of the notices and also failed to file any evidence in respect of the availability of the cash with the Managing Director. Since the assessee has failed to discharge the primary onus, we hereby decline to interfere in the order of the Id. CIT(A) on this ground.

Fee paid to ROC:

5. During the year, the assessee has paid Rs.19,01,605/- to Registrar of Companies for increasing the Share capital of the company. The expenditure incurred on account of enhancing the share capital and paid to ROC is to be treated as capital expenditure. Hence, keeping in view the judgements of the Hon'ble courts in the case of Brooke Bond India Ltd. v. CIT (CAL) 140 ITR 272, and Groz-Beckert Saboo Ltd. v. CIT (P&H) 160 ITR 743, the disallowance made by the Id. CIT(A) is hereby confirmed.

6. As a result, the appeal of the assessee is hereby dismissed.

Order pronounced in the open court.

Sd/-

(H.S. Sidhu)
Judicial member

Sd/-

(B.R.R. Kumar)
Accountant Member

Dated: 11.06.2019

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