

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.3420/Del./2016
(ASSESSMENT YEAR : 2006-07)**

**ITA No.3421/Del./2016
(ASSESSMENT YEAR : 2007-08)**

**ITA No.3422/Del./2016
(ASSESSMENT YEAR : 2008-09)**

**ITA No.3423/Del./2016
(ASSESSMENT YEAR : 2009-10)**

Shri Rohit Narang,
15/11, 2nd Floor,
Sarva Priya Vihar,
New Delhi – 110 016.

vs. ACIT, Central Circle,
Noida.

(PAN : AADPN9029P)

**ITA No.3434/Del./2016
(ASSESSMENT YEAR : 2010-11)**

DCIT, Circle - 3,
Gurgaon.

vs.

Shri Rohit Narang,
W – 5/3, DLF City, Phase – 3,
Gurgaon.

(PAN : AACPN5305K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Smt. Sulekha Verma, CIT DR

Date of Hearing : 04.07.2019

Date of Order : 17.07.2019

ORDER**PER KULDIP SINGH, JUDICIAL MEMBER :**

The aforesaid appeals filed by the assessee and the appeal filed by the Revenue are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, Shri Rohit Narang (hereinafter referred to as the 'assessee') by filing the present appeals sought to set aside the impugned orders all dated 31.03.2016 passed by the Commissioner of Income-tax (Appeals) - I, Noida qua the assessment years 2006-07, 2007-08, 2008-09 & 2009-10 on the identical grounds inter alia that :-

“GROUND No.1 - Regarding selection of the appellant's case for assessment u/s 153C

On the facts and circumstances of the case, the Id. CIT (Appeals) has erred both on facts and in law in rejecting the contention of the appellant that the selection of appellant's case for assessment under section 153C of the Act was invalid. He has not considered that the appellant was not connected to M/s Eldeco group in any manner and no material belonging to him was found during the search conducted under section 132 of the Act. Nothing has been brought out against him due to such alleged connection by the Ld. AO in his assessment order. As such the action of the Ld. CIT(A) is unjustified, uncalled for, bad in law and based on mere surmises and conjectures.

GROUND No.2 - Transfer of jurisdiction in the case from CIT - 26 Mumbai to ACIT Central Circle NOIDA without giving any opportunity to be heard to the appellant

The Ld. CIT (A) has erred on facts and law in rejecting the point raised by the appellant on following actions:

- a) in deciding that the appellant has accepted the decision of the CIT - 26 Mumbai in transferring out the case from his jurisdiction to ACIT Central Circle NOIDA.*
- b) in deciding that the appellant has also accepted the subsequent action pursuant to the said order,*
- c) In deciding that the protection u/s 2928 is available to the department*

The order u/s 127 and the subsequent order u/s 153C/144 were made without giving any opportunity of being heard to the appellant. At no stage during the assessment proceedings could the appellant appear or cooperate in any inquiry as he was unaware of any such action by the department. He got to know of this action only when the impugned order was passed by the Ld. AO. The appellant had raised these points during the appeal before the Ld. CIT(A) but the same has not been considered.

The Ld. CIT (A) should have looked into the merits of the case as to whether the Ld. AO is competent of pass the order or it suffers infirmity on some ground, making such assessment void-ab-initio. As such the order passed by the Ld. CIT(A) is unjustified, uncalled for, bad in law and ought to be deleted.

GROUND No.3 - Regarding completion of the assessment u/s 144/153C

The Ld. CIT(A) has erred on facts and law in upholding the action of the Ld. AO in completing the assessment u/s 144/153C. Only one notice was allegedly sent on 10.02.2014 by the Ld. AO on the old address belonging to the appellant. The Ld. CIT(A) completely ignored the fact that the latest address was also available with the AO but no effort was made to serve the notice to that address before completing the assessment. However, the impugned order and subsequent penalty notices were sent to the new address. As such the decision of the Ld. CIT(A) in upholding the action of the Ld. AO is unfair and against the principles of natural justice and ought to be deleted.

GROUND No.4 - Regarding treatment of the appellant as Resident and assessing him at an income of Rs.20,24,620/-

The Ld. CIT (A) has erred on facts and in law in upholding the decision of the Ld. AO in treating the appellant as a Resident and determining his income at Rs. 20,24,620/-. The Ld. CIT(A) completely ignored the fact that the AO did not try to ascertain

the correct residential status of the appellant and applied the income pertaining to AY 2010 - 11 of Rs. 20,24,620/- as the income of current year without providing any basis for the same.

The Ld. CIT(A) was provided copies of the appellant's appointment letters to prove that he was a Resident in India for only a short period of time. Copy of his passport along with an affidavit sworn from the counsel were also submitted. However, the same are not considered to be adequate by the Ld. CIT(A) and has upheld the action of the Ld. AO. As such the action of the Ld. CIT (A) is unjustified, uncalled for, bad in law and based on mere surmises and conjectures.”

3. Appellant, DCIT, Circle 3, Gurgaon (hereinafter referred to as the ‘assessee’) by filing the present appeals sought to set aside the impugned orders all dated 22.03.2016 passed by the Commissioner of Income-tax (Appeals) - 2, Gurgaon qua the assessment year 2010-11 on the grounds inter alia that :-

“1. Ld. CIT(A) has erred on fact and in law in allowing 50% of the additional depreciation for the machineries which were acquired and put to use in earlier year whereas the third proviso to section 32(1) of the Income Tax Act introduced by the Finance Act, 2015 is applicable for A.Y. 2016-17 and subsequent assessment years and not applicable to A.Y. 2010-11 under consideration.

2. Ld. CIT(A) has erred on fact and in law in accepting that sundry creditors written back is exempted u/s 108 of the Income Tax Act, 1961 when there is no evidence to suggest that the sundry creditors written back pertain to exempted unit.”

ASSESSEE’S APPEALS

ITA Nos.3420 TO 3223/Del./2016

AYs : 2006-07, 2007-08, 2008-09 & 2009-10

4. Briefly stated the facts necessary for adjudication of the controversy at hand in all the aforesaid appeals are : Assessment was framed under section 153C/144 of the Income-tax Act, 1961

(for short 'the Act') on failure of the assessee to put in appearance without bringing on record the evidence if the notice issued on 10.02.2014 u/s 153C of the Act was ever served upon the assessee and thereby assessed the total income of the assessee at Rs.20,24,620/- being the lowest salary shown by the assessee for AYs 2006-07, 2007-08, 2008-09 & 2009-10.

5. Assessee carried the matter by way of appeals before the Id. CIT (A) who has partly allowed the appeals. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

6. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeals with the assistance of the Id. CIT DR as well as on the basis of documents available on the file.

7. We have heard the Id. Departmental Representative for the Revenue to the appeals, gone through the documents relied upon and orders passed by the Revenue authorities below in the light of the facts and circumstances of the case.

8. Bare perusal of the impugned orders passed by the Id. CIT (A) goes to prove that no discussion on merit has been made in the impugned orders while dismissing the claim of the assessee. For

ready perusal, operative paras 8, 9 & 10 of the impugned order are extracted as under :-

“8. The claim of the appellant that he was a non resident for the AYs. 2006-07 to 2009-10 is a question of fact. As appellant was setting up the claim it was incumbent on the appellant to prove the same. The appellant brought no material evidence on record. On 30/03/2016 the ld. counsel submitted an affidavit sworn by him stating that he has received the scanned copy of the passport of the appellant and which he is placing on record in support of the claim of the appellant that he was non resident during the said period.

9. The affidavit of the ld. counsel merely states that he received a scanned copy of the passport of the appellant. A scanned copy is not admissible as evidence in judicial proceedings. Further, the copy was incomplete. In addition the passport which was being relied upon was issued in December, 2008 and therefore even if correct which still needs to be ascertained and proved by the appellant cannot be evidence of residential status prior to the date of its issue, i.e., 30/12/2008. The Id. counsel expressed his inability to produce the original passport for the relevant period for necessary verification. In view of this the appellant cannot be said to discharged its primary onus. The appellant has brought no material on record to prove its case that it was not resident in India for the period covered by A Y. 2006-07 to 2009-10. The claim of the appellant for being so is therefore rejected.

10. In view of all the three grounds raised by the Id. counsel for the appellant for the AY. 2006-07, 2007-08 , 2008-09 and 2009-10 the impugned assessment orders for these assessment years suffers from no infirmity. The same are therefore confirmed. The appeal of the appellant for these assessment years fails and is dismissed.”

9. When Id. CIT (A) has not made any discussion on merit on the grounds raised by the assessee in the appeals in question rather dismissed the appeals by passing a cryptic order, the issue is required to be remanded back to the Id. CIT (A) to decide afresh. More so, appeals filed by the assessee challenging the penalty levied u/s 271(1)(c) of the Act emanated from the assessment order in question for AYs 2006-07 to 2009-10 & 2011-12 have already been set aside to the AO to decide afresh vide *order dated 14.01.2016 in ITA Nos.3476 to 3480/Del/2016* on the ground that quantum appeals have not been decided on merits.

10. In view of what has been discussed above, present appeals have been remanded back to the Id. CIT (A) to decide afresh on merits by passing a speaking order by providing adequate opportunity of being heard to the assessee. Consequently, the appeals filed by the assessee are hereby allowed for statistical purposes.

REVENUE'S APPEAL
ITA No.3434/Del./2018 AY : 2010-11

GROUND NO.1 & 2

11. So far as appeal filed by the Department for AY 2010-11 is concerned, Grounds no.1 & 2 are determined by the Id. CIT (A) in

favour of the assessee by following the order of AY 2009-10 which has been remanded back to the Id. CIT (A) to decide afresh on merits by passing a speaking order. So, the identical issues raised in AY 2010-11 is also required to be decided afresh on merits in the light of the decision to be taken in earlier years. Consequently, grounds no.1 & 2 are determined in favour of the Department for statistical purposes.

12. Resultantly, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in open court on this 17th day of July, 2019.

**Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 17th day of July, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-I, Noida.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**