

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 80/Del/2019
Assessment Year: 2014-15

FROM HERE ON COMMUNICATIONS P. LTD. vs. ITO, WARD 9(2),
(NOW KNOWN AS DAIKO FROM HERE NEW DELHI
ON COMMUNICATIONS P. LTD.), NO. 352,
BHANU PRATAP KLHARI ESTATE, SULTANPUR
MEHRAULI-GURGAON ROAD,
NEW DELHI – 110 030
(PAN: AABCF7027Q)
(ASSEESSEE) **(RESPONDENT)**

Assessee by: Sh. Satish Aggarwal, CA
Revenue by: Ms. Ekta Vishnoi, Sr. DR.

ORDER

This appeal is filed by assessee against the Order dated 16.8.2018 passed by the Ld. CIT(A)-3, Delhi relating to Assessment Year 2014-15 on the following grounds:-

- 1. That the Ex-parte order passed by the Ld. CIT(A)-3 is arbitrary, biased and bad in law and in facts and circumstances of the case in so far as it confirms the additions made in the assessment order.*
- 2. That the Ld. CIT(A) has grossly erred in confirming an assessment of income at a sum of Rs. 25,69,100/- as against the returned loss of Rs. 1,67,540/- without affording proper and meaning opportunity to represent its case.*
- 3. That the Ld. CIT(A) has grossly erred in confirming an addition of Rs. 24,01,515/- made by the AO to the income of the assessee on the basis of Form 26AS for tax deducted at source by four parties*

ignoring the submissions of the appellant made before the AO and on the facts on record.

4. That the Ld. CIT(A) has grossly erred in confirming an addition of Rs. 15,71,354/- (out of total addition of Rs. 24,01,515/-) made by the AO to the income of the assessee ignoring the fact that the AO had not appreciated properly the reply filed by the two parties (out of 4 parties) as per given below and in not providing the copies of the same to the assessee to explain / reconcile the replies filed by the parties on the issue.

Party Name	Amount	Reply from the parties to whom notice u/s. 133(6) issued.
M/s Gopal Consumer World	1,09,551/-	M/s Gopal Consumer World has made payment to the assessee of Rs. 98596/- (109551-10955) on 20.12.2013 vide cheque no. 001192 after deducting the TDS of Rs. 10955/-.
Gopal Holidays P. Ltd.	14,61,803/-	Gopal Holiday P. Ltd. Has made payment to the assessee but subsequently they have reversed the payment.
Coram India P. Ltd.	5,49,261/-	Inspector was deputed for verification but he has submitted report with comments that this company is

		<i>not exist on the address.</i>
<i>Jaypee Healthcare Ltd.</i>	<i>2,80,900/-</i>	<i>Mailed on 20.12.2016 and 21.12.2016 no reply was submitted by the Company. In absence of the rely facts could not be verified.</i>
<i>Total</i>	<i>24,01,515/-</i>	

5. That the appellant craves leave to add, alter or delete the above grounds of appeal at the time of hearing."

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

3. During the hearing, Ld. counsel for the assessee has stated that Ld. CIT(A) has passed the exparte order without providing adequate opportunity of being heard and without observing the principle of natural justice and a result thereof the assessee could not file the additional evidence before the Ld. CIT(A). Ld. Counsel for the assessee filed a small Paper Book of Additional Evidence containing pages 1-4 in which he has attached the copy of certificate of M/s Gopal Consumers World certifying that deduction of TDS of Rs. 10,955/- was made by it twice one at the date and time of payment and again at the time of raising bill by teh appellant; copy of certificate of M/s Gopal Holidays (P) Ltd. Wherein it is clarified that it had reversed the bills of Rs. 14,61,803/- raised by the appellant on which it had deducted TDS of Rs. 1,46,180/- and copy of certificate of M/s Jaypee Healthcare Ltd. Wherein it is clarified that it had deposited excess TDS of Rs. 28,090/- for the month of March, 2014 on account of the appellant and stated that these additional evidences are very much essential to adjudicate the issues in dispute by thoroughly

examining the same at the level of the Assessing Officer. Hence, he requested to direct the Assessing Officer to thoroughly consider these additional evidences and decide the issues in dispute afresh, after giving adequate opportunity of being heard to the assessee.

4. On the other hand, Ld. DR relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has given various opportunities to the assessee, but the assessee remained non-cooperative.

5. I have heard both the parties and perused the records, especially the orders of the revenue authorities. I am of the view that there is no doubt that assessee remained non-cooperative before the Ld. CIT(A) as well as before the AO. I find that Ld. CIT(A) has passed the ex parte order without providing adequate opportunity of being heard and without observing the principle of natural justice and a result thereof the assessee could not file the additional evidences before the Ld. CIT(A). Before me, Ld. Counsel for the assessee filed a small Paper Book of Additional Evidence containing pages 1-4 in which he has attached the copy of certificate of M/s Gopal Consumers World certifying that deduction of TDS of Rs. 10,955/- was made by it twice one at the date and time of payment and again at the time of raising bill by the appellant; copy of certificate of M/s Gopal Holidays (P) Ltd. Wherein it is clarified that it had reversed the bills of Rs. 14,61,803/- raised by the appellant on which it had deducted TDS of Rs. 1,46,180/- and copy of certificate of M/s Jaypee Healthcare Ltd. Wherein it is clarified that it had deposited excess TDS of Rs. 28,090/- for the month of March, 2014 on account of the assessee, in my view these additional evidences are very much essential to adjudicate the issues in dispute by examining the same at the level of the Assessing Officer. Hence, I admit these additional evidences and set aside the issues in dispute to the file of the AO with the directions to consider these additional evidences and any other evidence to be filed by the assessee and then decide the issues in dispute afresh, after giving adequate opportunity of being heard to the assessee. Assessee through his counsel is directed to file the additional evidences and any other evidences with

the AO at the time of proceedings to substantiate its case and did not take any unnecessary adjournment.

6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced on 11/10/2019.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 11/10/2019

"SRB"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches