

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC" New Delhi

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.1253/Del/2019  
निर्धारणवर्ष/Assessment Year:2015-16

Vipin Gupta B-19, Shakti Nagar Extn., New Delhi.	बनाम Vs.	ITO Ward 34(4) Room No. 713, E-2 Block, Civic Centre, New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent
PAN No. AAOPG7646L		

निर्धारितकीओरसे /Assessee by	Shri Archit Goyal, CA
राजस्वकीओरसे /Revenue by	Shri Pradeep Singh Gautam, Sr. DR

आदेश /O R D E R

1. This appeal filed by the assessee against the impugned order dated 22.11.2018 passed by the Ld. CIT(Appeals)-12, New Delhi in relation to assessment year 2015-16 on the following grounds:

***"Ld. CIT(A) has erred in giving following observations:***

- 1. The Ld. CIT(A) has erred in giving a finding that "the assessee had enough time to collect any papers it wanted to rely on" whereas the record speaks that appellant could not get the desired information despite follow up made with the Ld. AO.*
- 2. The Ld. CIT(A) has erred in observing that the "proceedings cannot be kept in abeyance without reasonable cause" whereas the appellant was waiting for information from the Ld. AO as per the letter dated 20.11.2018 to make effective representation before the Ld. CIT(A).*
- 3. The Ld. CIT(A) has erred in observing that "no justifiable reason to adjourn the proceedings on an unsubstantial basis" whereas the copy of letter written to Ld. AO was part of the letter dated 20.11.2018 given to Ld. CIT(A) for seeking*

*adjournment.*

4. *The Ld. CIT(A) has erred in considering only observations of the Ld. AO in para 6 of the Ld. CIT(A) order whereas submission of the appellant given before the Ld. AO (reproduced by Assessing Officer in order also) has not been considered and thereby not observing the principle of natural justice.*
5. *The Ld. CIT(A) has erred in observing that “the appellant is not interested to pursue the appeal filed by him” whereas the appellant was pursuing the appeal and also was pursuing with the Ld. AO in respect of the replies received against notice issued u/s 133(6) of the IT Act, 1961 by the Ld. AO.*

***Disallowance of commission expenses***

6. *The Ld. CIT(A) has erred in confirming the disallowance of Rs. 20,85,909/- made by the Ld. Assessing Officer (“AO”) in respect of commission expense.*

***Misunderstanding the assessee’s nature of business***

7. *The Ld. AO as well as Ld. CIT(A) has grossly erred in not understanding the nature of business of the appellant by giving a decision in Para 8.1 “the assessee is engaged in the business of procurement and sale of refractory bricks” even though it was specifically explained by the appellant in the written submission dated 12<sup>th</sup> December, 2017 made before the Ld. AO.*

***Misinterpretation of appellant’s main source of income***

8. *The Ld. CIT(A) has erred in mentioning in para 8.1 that “The bricks were sold to various steel plants in India under the name and style of M/s Vira enterprises” whereas the appellant’s only source of income is receiving commission from M/s Tianjin New Century Refractories Co. Ltd. (hereinafter referred as “TNCR”) in facilitating the sale thereof.*

***Evidence not considered in respect of commission expense***

9. *The Ld. CIT(A) has erred in observing that the appellant could not prove the services rendered by the agents whereas sufficient evidence was furnished keeping in view of the nature of business which includes email communication of appellant with agents.*
10. *The Ld. CIT(A) has erred in confirming the observation of Ld. AO that the buyers could not acknowledge the services of agents whereas the agents provided services to the appellant in facilitating the business procured from seller i.e. M/s TNCR.*
11. *The Ld. CIT(A) has erred in making observation in para 8.4 of his order that the appellant could not prove how agents helped him in procuring the sales whereas the appellant has placed the requisite evidence on records.*

***Reliance on case law-different and distinguishable from facts of case***

12. *The Ld. CIT(A) has erred in applying the case laws in its order which are different and distinguishable from the facts of the appellant.*

***Disallowance of business expenses***

13. *The Ld. CIT(A) has erred in confirming the disallowances of Rs. 2,39,801/- made by Ld. AO alleging the same for personal purpose in respect of business promotion, telephone, car maintenance, car depreciation, petrol, interest and travelling expenses.*

2. At the time of hearing, Ld. Counsel for the assessee stated that Ld. First Appellate Authority has not given sufficient opportunity for substantiating his claim before the Ld. First Appellate Authority in spite of the fact that the assessee is having all necessary evidences for substantiating his claim in support of his contention. He has also filed a Paper Book containing pages 1 to 299 in which he has filed:

1. *Certified true copy of letter dated 06.08.2018 filed before Sh. Surender Singh the Ld. AO for seeking a copy of the information obtained u/s 133(6) from the commission agent and steel plant and a copy of Order Sheet.*
2. *Appellant's subsequent letter dated 15.11.2018 filed before Sh. Surender Singh the Ld. AO for seeking a copy of the information obtained u/s 133(6) from the commission agent and steel plant and a copy of Order sheet.*
3. *Appellant's letter dated 20.06.2018 filed before Sh. Anil Kumar Mishra the Ld. CIT(Appeals) for seeking adjournment along with the power of attorney.*
4. *Appellant's letter dated 04.09.2018 filed before Sh. Anil Kumar Mishra the Ld. CIT(A) for seeking adjournment along with the copy of letter filed before Ld. AO for seeking copy of documents referred in Assessment Order.*

5. *Appellant's letter dated 20.11.2018 filed before Sh. Anil Kumar Mishra the Ld. CIT(Appeals) for seeking adjournment along with the copy of letter filed before the Ld. AO for seeking copy of documents referred in Assessment Order.*
6. *Copy of Statement of Profit & Loss for the year ended 31.03.2015.*  
***Before the Assessing Officer***
7. *Reply dated 24.04.2017 and 24.05.2017 filed before the Ld. AO with reference to claim of commission along with the notice and questionnaire issued u/s 142(1) of the Act dated 26.08.2016 and 19.01.2017.*
8. *Reply dated 11.08.2017 and 12.09.2017 filed before the Ld. AO with reference to claim of commission along with the notice and questionnaire issued u/s 142(1) of the Act dated 31.07.2017.*
9. *Reply dated 14.11.2017 and 04.12.2017 filed before the Ld. AO with reference to claim of commission along with the notice and questionnaire issued u/s 142(1) of the Act dated 15.09.2017.*
10. *Reply dated 12.12.2017 filed before the Ld. AO with reference to claim of commission along with the notice issued u/s 142(1) of the Act and show cause notice dated 05.12.2017.*
11. *Reply dated 21.12.2017 filed before the Ld. AO with reference to claim of commission along with the notice issued u/s 142(1) of the Act and show cause notice dated 21.12.2017.*
- 12(a) *Replies of buyers filed before Ld. AO against the notice issued u/s 133(6) of the Act.*
- 12(b) *Replies of agents filed before Ld. AO against the notice issued u/s 133(6) of the Act.*
13. *E-mail communication of appellant with commission agents.*

3. He requested that issues in dispute may be set aside to the Ld. First Appellate Authority to decide the same afresh as per law, after giving full opportunity to the assessee.

4. On the contrary, Ld. DR relied upon the order passed by the Ld. First Appellate Authority but did not raise any serious rejection on the request of the Ld. Counsel for the assessee.

5. I have heard the both parties and perused the orders passed by the Revenue Authorities especially the documentary evidence filed by the assessee in the shape of Paper Book containing pages 1 to 299 in which the assessee has attached various documentary evidences for substantiating his claim. I am not commenting on the documentary evidence filed by the assessee in the shape of Paper Book but I am of the considered view that in the interest of justice, the issues in dispute required reconsideration at the level of Ld. First Appellate Authority. Therefore, in the interest of justice, I am setting aside the issue in dispute to the Ld. First Appellate Authority to decide the same afresh as per law, after giving full opportunity to the assessee and also to consider the evidences filed by the assessee mentioned above.

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

The order pronounced in the open court on 02.12.2019

Sd/-  
(H.S. SIDHU)  
JUDICIAL MEMBER

Dated: 2<sup>nd</sup> December, 2019

*\*Kavita Arora, Sr. PS*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**