

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3847/Del/2016
(Assessment Year: 2011-12)

Pragya Vision Pvt. Ltd, Flat No. 909, Kailash Building, KG Marg, New Delhi PAN: AADCP8289N	Vs.	DCIT, Central Circle-13, New Delhi
(Appellant)		(Respondent)

Assessee by :	None
Revenue by:	Ms. Pramita M. Biswas, CIT DR
Date of Hearing	21/08/2019
Date of pronouncement	19/11/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT (A)-25, New Delhi dated 29.03.2016 for the Assessment Year 2011-12.
2. The assessee has raised the following grounds of appeal:-

“1. *That an appeal against the impugned order of the learned A.O. was filed before CIT (Appeals) on 26th April 2013 but CIT (Appeals) has passed an Ex-Parte order by confirming the demand of Ld. A.O. on 29.03.2016 without taking into consideration the reasons due to which the appellant could not provide the necessary documents and evidence and could not attend the hearings before the CIT (Appeals). Some of the reasons are provided below:-*

(a) That initially the Directors of the Company were Mrs. Meena Tewari and Mrs. Reena Tewari. Mr. P.K. Tewari was director from 07.10.2010 to 03.01.2012, Mrs Reena Tewari resigned on 17.07.2015 and Ms. Lubna Panwar was appointed director on 09.07.2015.

(b) That the family of Mrs. Meena Tiwari was undergoing severe problems. Her elder son Mr. Anand Tiwari has been suffering from a chronic liver disease for the past 4-5 years. On account of his severe illness he has been admitted/treated in various hospitals in India as well as abroad on innumerable occasions and has been bedridden for most of the time during these years. On account of his severe medical condition, Mr. Anand Tiwari has been completely incapacitated and Mrs. Meena Tiwari had to

devote substantial time with her said son. The younger son of Mrs. Meena Tiwari also was undergoing extremely bad phase due to addiction, so his wife Mrs. Reena Tiwari could not give time in business affairs and Mrs, Meena Tiwari also was in continuous stress. Her husband Mr. P.K. Tiwari was also suffering from various illnesses and had also been incarcerated in connection with the CBI cases relating to his companies from July, 2012 to October, 2012 and from September 2014 to March 2015. Her ailing son Anand Xiwari was also incarcerated in false CBI Matters. Thus Mrs. Meena Tiwari was single handedly running the company in whatever time she could spare. As she was attending the office very rarely, certain employees took benefit of the situation and did not perform their duty. Moreover the, Appellant Company was also going through severe financial crunch during all these years. Also, later Mrs. Meena Tewari had certain dispute with her husband and he resigned as director. Certain official appointed by Mr. P.K. Tewari did not cooperate with Mrs. Meena Tewari and there was complete stands still and messy situation. Due to the Cumulative effect of all the above extreme circumstances Mrs. Meena Tewari herself went into acute depression, this coupled with falior of the official of the company in taking steps for compliances in relation to taxation and other statutory obligations, created extreme situation for the company.

- (c) That the senior officials of the company in finance department committed serious acts of omissions and commission. It is learnt that such officials had been involved in various irregularities due to which the company and its present directors have suffered the extra ordinary circumstances and trauma. On account of such grave situation, the matter before the respondent could not be pursued in a proper manner.*
- (d) That the authorized representative, representing the appellant company before the respondent extracted huge money from the appellant but did not properly put forward the case before the respondent. They should at least have represented the difficulties being faced by the company and ought to have defended the appellant to the best of their capacity on the basis of records which were within their possession and knowledge. But most unfortunately they failed to perform their professional duty, resulting in passing of the impugned order. It is submitted that Mrs. Meena Tewari provided all records to the Authorized representative but it has know come to knowledge that the same was not brought to the notice of the department.*
- (e) That the respondent ought to have considered the aforementioned bona fide reasons and extra ordinary circumstances and should have granted further time to the appellant to satisfy the respondent on the aspect that the demand raised by the Ld. A.O. was illegal and unwarranted. The ex-parte order passed by the respondent is unwarranted and has resulted in extreme prejudice to the appellant.*

- [f] That the appellant is entitled for hearing instead of the case being decided unheard.
 - [g] That the failure on part of the appellant in pursuing its appeal was neither deliberate nor intentional and the same was occasioned due to reasons mentioned above.
 - [h] That the extra-ordinary adverse situation suffered by the appellant entitles it for a fair hearing before this Tribunal so that the case can be decided on merits instead of being thrown out on account of non representation.
 - [i] The company did everything within its power by engaging professionals to represent it before the respondent but the said professionals failed to perform their duty by not advising the company in the matter and by not representing it in bona-fide manner.
 - [j] That the company sought a number of adjournments and tried to present its case.
 - [k] That due to lack of funds and non availability of documents as explained above, the company, inspite of taking many adjournments, was not able to defend its
 - [l] That no reasonable opportunity was provided to the Company to present its case and to justify the grounds for quashing the impugned order of the learned A.O.
 - [m] That the impugned order, confirming the order of A.O., was passed by the CIT (Appeals) without considering the grounds provided by the Company or the documents or evidences to be provided on part of the Company and the order was passed ex parte.
 - [n] That the Company has valid grounds and will be able to establish that the impugned order passed by the learned A.O. was bad in law and was based only on presumptions, if a reasonable opportunity is provided to the company.
 - [O] That the grounds provided by the company in the appeal before the CIT (Appeals) which were not considered by it before confirming the impugned order of learned A.O. are provided below.
2. That the assessment order dated 18.03.2013, passed by the Ld. A.O. U/s 144, is bad in law.
 3. That the assessment order dated 18.03.2013 passed u/s 144, deserves to be quashed, because natural justice has been denied by the Ld. A.O. to the assessee.
 4. That on the facts of the case and under the law, the Ld. A.O. has erred in not taking into consideration the assessee's reply, vide letter dated 15.03.2013{filed on 18.03.2013}.
 5. That on the facts of the case and under the law, the Ld. A.O. has erred in altogether ignoring the assessee's reply, vide letter dated 15.03.2013(Friday), Which had been filed on 18.03.2013 (Monday).

6. *That on the facts of the case and under the law, the Ld. A.O. has erred in ignoring the total loss of Rs. 13,64,35,972/- declared by the assessee vide its return of income , While computing the total income assessed.*
7. *That on the facts of the case and under the law, the Ld. A.O. has erred in making disallowance of Rs. 2,60,82,658/-, on account of alleged bogus claim of depreciation on the plant & machinery.*
The observation of the Ld. A.O. are either factually incorrect or are legally untenable.
8. *That on the facts of the case and under the law, the Ld. A.O. has erred in making addition of Rs. 17,80,62,138/- on account of Unsecured Loan received ,thereby treating the said amount as Unexplained Credit.*
The observation of the Ld. A.O. are either factually incorrect or are legally untenable.
9. *That on the facts of the case and under the law, the Ld. A.O. has erred in making disallowance of Rs. 20,23,87,561/- being the expenditure other than depreciation claimed by the assessee in the P&L A/c, Thereby treating the said amount as Unexplained expenditure.*
The observation of the Ld. A.O. are either factually incorrect or are legally untenable.
10. *That the total income assessed at Rs. 40,65,32,357/- is arbitrary, unjust, illegal & highly excessive.*
11. *That on the facts of the case and under the law, the Ld. A.O. has erred in not allowing set off of losses of the earlier years.*
12. *That the income tax liability created at Rs. 13,50,39,887/- is arbitrary, unjust, illegal & highly excessive.*
13. *That the Ld. A.O. has erred in not giving full credit of prepaid taxes.”*
14. *That on the facts of the case and under the law, the Ld. A.O. has erred in charging interest u/s 234A. Without prejudice, the interest charged is highly excessive.*
15. *That on the facts of the case and under the law, the Ld. A.O. has erred in charging interest u/s 234B, Without prejudice, the interest charged is highly excessive.*

That the reasonable opportunity be provided to the Company for evidencing and establishing the above mentioned grounds which it could not do before the CIT (Appeals).

The appellants crave leave to raise additional ground(s) of appeal to alter/modify the ground(s) of appeal, and/or to withdraw the ground(s) of appeal, either prior to or during the course of appellate proceedings.

3. The facts of the case show that assessee is a company. Search and seizure action u/s 132 of The Income Tax Act 1961 was conducted on century communication group on 11/3/2011. Assessee was also covered in that search. Notice u/s 142 (1) was issued to the assessee on 27/9/2012 however the assessee company did not file any return of income in time allowed. Assessee submitted its return of income on 26/2/2013, just before the assessment was getting time barred, declaring nil income. Subsequently detailed questionnaire was issued by AO, however no reply was submitted. In the end, AO issued show cause notice also which was not replied. Therefore, the learned assessing officer did not have any other alternative but to pass an assessment order u/s 144 of the income tax act. The AO passed such an order on 18/3/2013 determining total income of the assessee at INR 406532357/-. Ld AO made disallowance of
- a. depreciation claim of assessee of Rs. 2 6 6082658/- in absence of any detail of the assets,
 - b. Addition of unsecured loan of INR 1 78062138/- u/s 68 of the act as assessee did not furnish any confirmation showing identity, creditworthiness and genuineness of the transaction and
 - c. Disallowance of all the expenditure amounting to INR 2 02387561/- as assessee did not furnish any information or produce books of accounts before the assessing officer to show that these expenditure were incurred wholly and exclusively for business purpose.
4. Assessee filed appeal before the learned CIT – A. The assessee u/r 46 A of the Income tax Rules, 1963, submitted an application for admission of additional evidence before the learned CIT – A. The reason shown that assessee could not furnish this information before the learned assessing officer because of
- a. There was a CBI search on appellant on 7/2/2012.
 - b. Large number of cases involved in the group and directors who had the knowledge of finance and accounts were under CBI judicial custody from 18/7/2012 to 15/10/2012,
 - c. accountant and other staff had left,
 - d. absence of staff resulted into non-tracing of the records,

e. Mental agony and depression on the directors after getting released from the judicial custody.

Therefore, it was submitted that the assessee could not submit the details before the learned assessing officer.

5. Additional evidences mentioned with respect to depreciation were details of block -wise addition of fixed assets along with the copy of quarterly summary with breakup of addition showing depreciation allowable for more than 180 days or less than 180 days. Assessee attached index of paper book (not the paper book). Further, with respect to the allowability of expenditure and onus with respect to unsecured loan assessee merely submitted the copy of the balance sheet and copy of the Ledger account.
6. Despite this fact the learned CIT – A asked for remand report from the AO with respect to the additional evidence submitted by the assessee. As per remand report dated 6/1/2016 the AO submitted that on 20/1/2015 assessee was asked to furnish all the supporting evidences as per paper book filed before the CIT – A. Case was fixed for hearing on 27/1/2015. Before the assessing officer none appeared or submitted any detail. Therefore, in the remand report the learned assessing officer requested that the additional evidence furnished by the assessee under rule 46A of the income tax rules may be rejected. The learned CIT – A gave this remand report to the assessee to submit a counter replies. The assessee submitted letter dated 22/3/2016, which is listed at page number 14 onwards of his order. There is no answer in the letter submitted by the assessee that why it did not comply during the assessment proceedings as well as in the remand proceedings. With respect to the depreciation assessee once again reiterated, that assessee has filed details of addition to the fixed assets along with bills and vouchers evidencing the purchase of the fixed assets. The reference was made to assessment year 2010 – 11 where such additional evidences were submitted. With respect to the claim of the expenditure, assessee submitted balance sheet for the year ended on 31/3/2013 (where the assessment is going on for assessment year 2011 – 12) details of expenditure in the form of Ledger account were submitted. Claim was made that assessee had a turnover of INR 92,000,000 and therefore various expenditure have been incurred which are reflected in the

profit and loss account. It was further stated that sale of INR 92,000,000 cannot be made without incurring the expenditure. With respect to claim of allowability of loss of INR 136435972/- was made which was filed according to the assessee as per return on 25/2/2013.

7. The learned CIT – A considered the additional evidence submitted by the assessee as per para number 8.7 – 8.17 of his order giving several reasons for not admitting the additional evidences filed by the assessee as it did not satisfy any of the criteria laid down under that rule. The learned CIT – A considered the conduct of the assessee during the assessment proceedings as well as in the appellate proceedings and was of the opinion that the assessee was given enough opportunities, however, at each and every time the assessee did not cooperate and tried to scuttle the assessment as well as appellate proceedings by seeking adjournments. Thereafter, he proceeded to decide the issue on merit and dismissed the appeal of the assessee as no information as required under the law was furnished by the assessee.
8. Aggrieved by the order of the learned CIT – A assessee preferred appeal before us. The appeal was fixed on 11 /04/2019 none appeared on that date on behalf of the assessee, no adjournment was sought. Further date was intimated to the assessee by registered post fixing date of hearing on 3/6/2019. On that date, none appeared on behalf of the assessee. Therefore, on that date notice was directed to be issued to the assessee by registered post fixing the date of hearing on 21/8/2019. On that date also none appeared on behalf of the assessee. Thus, it was apparent that assessee was not willing to cooperate before us also. Therefore, the issues are decided on the merits of the case as per information available on record.
9. The learned departmental representative vehemently supported the orders of the lower authorities. She referred to the conduct of the assessee before the assessing officer, before the learned CIT – A. She also defended the order of the learned CIT – A in not admitting the additional evidences stating that such additional evidences were not produced before the assessing officer because of sufficient cause and therefore the CIT – A was justified in rejecting the same. Even otherwise he submitted that when learned CIT – A asked for remand report of AO, the assessee did not produce any details before the assessing officer. She further submitted that in the proceedings

before the CIT – A the additional evidences were not enough and sufficient to deal with the issues and therefore those were not the additional evidences but a strategy of the assessee to thwart the assessment and appellate proceedings. Even otherwise, she submitted that for the claim of the depreciation the assessee should have established ownership, use, cost of the assets which the assessee has failed to submit. Merely submitting a chart will not show eligibility for claim. With respect to the unsecured loan the assessee should have submitted the identity and creditworthiness of the lenders as well as the genuineness of the payment of loan which assessee has miserably failed to do so. With respect to the allowability of expenditure, she submitted that assessee should have produced the Books of accounts as well as the vouchers and bills for the expenditure to show that they have been wholly and exclusively incurred for the purposes of the business. This has not been done by the assessee. Merely producing the audited balance sheet does not suffice for the allowance of the expenditure. She further submitted that the claim of the assessee that it has a turnover of Rs 9,20,00,000 whereas the expenditure incurred by the assessee claimed as expenditure of Rs 20,23,00,000. This itself suggest that books of accounts et cetera are not reliable. She further submitted that there was a search pursuant to which the complete details were available about the tax evasion by assessee. She further referred to the facts of the case to show that there was a search by Central bureau of investigation on the assessee company which itself shows that how the company was being run/ business conducted by the directors. In view of this she submitted that there is no infirmity in the order of the learned assessing officer or the learned CIT – A in confirming the above addition.

10. We have carefully considered the rival contention and perused the orders of the lower authorities. With respect to the first ground of appeal in detail about the non-availability of the opportunity before the learned CIT – A, before the learned assessing officer, it is apparent that according to the version of the assessee, director of the company was in judicial custody from 18/7/2012 to 15/10/2012. In the present case the assessment proceedings started from 22/10/2013 and ended on 18/3/2013 (as mentioned in column number 8 of the assessment order about the date of

hearings). Therefore it is apparent that assessment proceeding were after release of the directors from the judicial custody. Therefore, this explanation does not serve any purpose for non-submission of details or for appearing before the learned assessing officer. Absence of the staff could not be a valid reason for a company who has such a large operations as claimed by the assessee. Further, with respect to mental agony/depression of the directors no evidences were produced. No evidences were produced that there are large number of cases involved on the group. In view of above facts we do not find any reason to upset the orders of the lower authorities and in fact we agree that the assessee had sufficient opportunity to furnish the evidence but assessee has deliberately not submitted the same.

11. Further with respect to the additional evidences submitted by the assessee, the learned CIT – A asked for the remand report of the assessing officer. In remand proceedings before the learned assessing officer, despite opportunities given by him, none appeared on behalf of the assessee on the appointed date. Even before the learned CIT – A there was no reason given by the assessee that why it did not appear before the assessing officer even in remand proceedings. Even CIT (A) has at so many placed about the approach of the assessee about representation before him. These words speak loud about the conduct of the assessee showing absolute non-cooperation. Therefore, we do not find any infirmity in the order of the learned CIT – A in rejection of the additional evidences.
12. With respect to the additional evidences submitted by the assessee, it is apparent that they were not enough to allow the claim of the assessee. For the purpose of the depreciation on the assets, the assessee was required to show the ownership of the asset, the use of the asset and actual cost of the assets. For this assessee only produce the various statements. Those statements were not sufficient to examine the claim of the assessee. With respect to the unsecured loan, no confirmation to show the identity and creditworthiness of the creditors' /unsecured lenders and genuineness of the transaction was filed. For the justification of the allowability of the expenditure only the balance sheet and the ledger copies of expenditure for shown. Merely by filing the balance sheet and the Ledger account of expenditure, it does not show that whether the expenditure has been wholly

and exclusively incurred for the purposes of the business are not. In view of this the learned CIT – A dismissed the appeal of the assessee and confirmed the disallowances made by the AO. Looking to the conduct of the assessee and non-cooperative attitude towards the assessment proceedings and appellate proceedings, it is apparent that there is more than what meets the eye, in the present case. Even before us, in spite of filing an appeal against the order of the learned CIT – A, issuing two notices by registered post resulting in to nonappearance by the assessee, not even submitting along with the appeal, at least paper books filed before the learned CIT – A before us, absence of any affidavit by the directors to show that the letters were submitted before the assessing officer which are alleged to have not been admitted by the AO or the additional evidences deserves to be admitted before the assessing officer and the learned CIT – A, thus, it is apparent that assessee did not care to represent its case. Therefore, we find no infirmity in the order of the lower authorities in holding that sufficient and proper opportunity of hearing was granted to the assessee. Thus there is no violation of the principles of natural justice by the revenue authorities in assessing the income of the assessee as well as in the appellate jurisdiction. Thus, ground number 1, 2, 3, 4, 5 are dismissed.

13. Ground number 6 of the appeal is against the ignoring the total loss of INR 136435972 declared by the assessee vides its return of income while computing the total income assessed. The learned assessing officer has noted that the assessee has filed a nil return of income. No evidence has been produced by the assessee before the lower authorities or before asked and therefore such loss cannot be allowed to the assessee. Thus, ground number 6 is dismissed.
14. Ground number 7 is with respect to the disallowance of depreciation on the assets confirmed by the learned CIT – A assessee did not submit the details about the ownership of the assets, user of the assets and the actual cost incurred by the assessee to acquire those assets. In absence of these basic details, the claim of the depreciation was rightly rejected by the lower authorities. Accordingly ground number 7 is dismissed.
15. Ground number 8 is with respect to the confirmation of addition of INR 1 78062138/- on account of unsecured loan received. The assessee has not

produced any details with respect to the identity of lenders, their creditworthiness and genuineness of the transaction. Thus assessee has failed to discharge initial onus cast upon it u/s 68 of the income tax act. Therefore we do not find any infirmity in the order of the lower authorities in confirming the above addition. Ground number 8 is dismissed.

16. Ground number 9 is with respect to the disallowance of expenditure of INR 2 02387561/- confirmed by the learned CIT – A. Before the lower authorities assessee did not submit any details about the expenditure except submitting the ledger accounts that too in remand proceedings as additional evidence, without substantiating the same with the vouchers and bills and the nature of expenditure, thus, no infirmity can be found with the orders of the lower authorities in disallowing the above expenditure. Further the claim of the assessee that it has entered into a turnover of INR 9.2 crores, which could not have been carried out without incurring any expenditure, is devoid of merit because for the purpose of turnover of 9,20,00,000 the assessee has incurred the expenditure of 20.23 crores and assessee has not submitted the details of expenditure of a single rupee. Accordingly ground number 9 is dismissed.
17. Ground number 10, 11, 12, 13, 14 and 15 of the appeal are general in nature challenging the computation of total income, determining the tax liability and interest thereon. As the additions have been sustained in the hands of the assessee all the above issue is consequential in nature. Therefore all these grounds are dismissed.
18. Accordingly, appeal of the assessee is dismissed.
Order pronounced in the open court on 19/11/2019.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 19/11/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating member	
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	