

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

BEFORE MRS. DIVA SINGH, JUDICIAL MEMBER

ITA No.444/Del/2019

Assessment Year: 2011 -12

M/s Mam Raj Chunni Lal 5183 Lohri Gate Delhi-110006	Vs.	Income Tax Officer, 46(1), New Delhi.
PAN : AA AFM 9668A		
(Appellant)		(Respondent)

Appellant by	Sh. K.L. Aneja, Adv.
Respondent by	Sh. Pradeep Singh Gautam, Sr. D.R.
Date of hearing	03.02.2020
Date of pronouncement	07.02.2020

ORDER

The present appeal has been filed by the assessee wherein the correctness of the order dated 14.09.2018 of CIT(A)-16, New Delhi pertaining to 2011-12 assessment year is assailed on the following grounds.

“1. That the Ld. CIT(Appeals) erred in law and on facts in confirming addition of Rs.39,42,270/- as made by the AO without properly considering documents on record, justifying no addition on facts and in law, whatsoever.”

1.1 That the ld. CIT(Appeals) was wrongly influenced by the surrender obtained from the Appellant and CIT(A) ought to have exercised his powers/authority vested in law as to whether the addition of Rs.394270/- representing expenses incurred in the preceding years but now having been accepted in year under Appeal, was taxable.

2. That the Ld. CIT(Appeals) has been unjust in confirming disallowance of Rs.101198/- out of expenses on telephone, car expenses, interest on Car Loan, Car depreciation @ 15% of the total expenses amounting to Rs.674256/- ignoring the magnitude of business activities of the Appellant.

3. That the Ld. CIT(Appeals) reserves its right to add, amend and modify and Grounds of Appeal before final adjudication.”

2. The Id. AR inviting attention to the ground Nos.1 and 1.1. submitted that the addition made by the Assessing Officer and sustained by the CIT(A) in appeal is bad in law. It was submitted that the assessee was having a dispute with M/s Fena Pvt. Ltd. It was ultimately settled in a subsequent assessment year. Referring to the reply at Paper Book page 35, it was submitted that this argument had been made before the Assessing Officer and the assessee placed full facts and evidences to show that there is a dispute with M/s Fena Pvt. Ltd. and only on account of the mental stress and insistence of the AO he agreed to the addition on the condition no penalty would be levied. The evidences and facts were available with the Assessing Officer for which purpose PB running 15 pages was filed and relied upon on reading the submissions made qua ground No.2 before the Id. CIT(A). The Id. Sr. DR submitted that it was an agreed addition as such could not be challenged. Finding of the CIT(A) was relied upon.

3. On a reading of the impugned order, it appears that some facts had specifically been brought to the notice of the Id. CIT(A). In view thereof, it appears that the grievance posed in ground No.1 in the present proceedings is made out. Accordingly, after hearing the Id. Sr. DR it was deemed appropriate to restore the issue back to the file of the CIT(A) directing him to pass a speaking order after addressing the grievance of the assessee where it is maintained that it was not an agreed addition. The relevant extract of the submissions relied upon which are reproduced hereunder for ready reference page 35, 36 of PB:

“Ground No.2

The addition of Rs.3,94,270/- on account of receipt of outstanding sums from preceding year from M/s FENA (P) Ltd.

The Appellant is indgldged in Arab apart from selling very good and superior quality of Rice and dealt with M/s FENA (P) Ltd. In the previous year relevant to AY:2010-11 and supplied Rice and incurred other expenses aggregating to Rs 11,61,996/- which was declined by the said Party to pay and for recovery of the same a legal notice dated 23.6.2010 was sent through Solicitors which was contested by said M/s FENA vide letter dated 6.7.2010. After discussion the said party M/s FENA agreed to pay a sum of Rs 3,94,270/- vide letter dated 15.7.2010 and asked for issue of proper bill as had done before. The said Party has posted the entries in this respect in his Books.

The Appellant forwarded the Bill vide letter dated 15.07.2010 for recovery at out-standing sum of Rs.394270/- which was of certain liabilities as on 31.3.2010 and forming part of Books of Account in AY: 2010-11. A copy enclosed (Pages). The Audited Accounts for AY: 2010-11, the evidence out-standing are produced for verification. Copies of notice replied and final comprises of documents are placed in the Paper book at page.....

*The perusal of the above, will reveal that the out-standing sum pertained to AY:2010-11 which was towards business dealings and had no co-relation to the income of AY: 2011-12 (year under Appeal) **but the Appellate under stress of circumstances of mental temperament and due to AO,s pressure, was forced to agree to pay tax thereon subject to no penal action. But the AO still considered the add back for concealment of income and ultimately levied penalty vide order dated 26.08.2014 and subject matter of separate Appeal bearing Appeal No.178/2014-15.***

There is no dispute for the additions made in the year, had no co-relation with any part of the income and recovery of the out-standing business debited balance in the previous year and by no stretch of imagination to be treated as income for AY: 2012-13. No income can be added by the AO simple conditions of the Appellant that too under mental temperament and sorrow condition in the family because of death of senior partner Sh. Pradeep Kumar before passing assessment order under Appeal. The principal of natural justice and fair play do require that list of additions could not be made on the mere reasons that recovery of out-standing sum was made in the year under consideration. The AO has not brought: any material on record that the impugned sum has no co-relation with the current year's income and as such the add back deserves to be deleted.

3.1 It is seen that the ld. CIT(A) held as under:

7. Ground No. 2: *Pertains to addition of Rs.3,94,270/- on account of receipt of the amount from M/s Fena P. Ltd. In appeal no submission is made by the Ld. AR of the appellant. In fact on perusal of assessment order it is noted that the appellant vide its letter dated 17.01.2014 has admitted the fact that the payment from M/s Fena P. Ltd. has not been disclosed in the books of account. The appellant has already offered the same for taxation before AO. Therefore to my mind once an amount has been surrendered before AO it closes the chapter on that issue. The AO then shifts his focus from the issue and concentrate on other issues. After agreeing for disallowance before AO and then raising the same ground in appeal is to my mind is very unfair. The appellant in a way has bypassed the scrutiny of the AO by unfair means. Therefore, in the light of unambiguous offer before AO, to my mind the appellant has precluded any scope for relief before appellate authority. Therefore the addition of Rs.3,94,270/- made by the AO is confirmed. Hence **this ground of appeal is dismissed.***

(emphasis supplied)

3.2 Accordingly on a reading of the above ground No.1 and 1.1 are restored back with the direction to pass a speaking order in accordance with law and after giving the assessee a reasonable opportunity of being heard as admittedly the assessee has contested that it was not an agreed addition.

4. Addressing the issues raised in ground no.2, the ld. AR submitted that this was the first time the order was passed in scrutiny proceedings u/s 143(3) as earlier

return was processed u/s 143(1). Thus, no disallowance was made in the past. The ld. Sr. DR relied upon the impugned order.

5. I have heard the submissions and perused the material available on record. It is seen that the ld. CIT(A) has addressed the issue in the following manner:

“7. Ground No.3: Pertains to disallowing of Rs.1,01,138/- out of the expenses on telephone, car expenses, interest on car loan, car insurance and car depreciation for personal use of the partner. The AO noted that the assessee has not maintained the log book in r/o of car. The AO further noted that the element of personal use can not be denied. Therefore, the AO disallowed of 15% of these expenditure being personal in nature. In appeal no material facts has been brought on record by the Ld. AR to controvert the finding of the AO. Possibility of personal element in these expenses cannot be ruled out. Therefore, the disallowance made by the AO is confirmed. Therefore, this ground of appeal is dismissed.”

6. The ld. AR prays for relief. The ld. Sr. DR states that in the facts, no relief is maintainable since there is no reference to any fact for comparison. The parties were heard on a fair estimate. Ultimately it was agreed that estimate of 7.5 % would satisfy the parties. Addition to the said effect by way of estimate is sustained. Said order was pronounced in the open court at the time of hearing itself.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

The order is pronounced in the open court at the time of hearing itself on 07th February, 2020.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

PK/PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR,
ITAT NEW DELHI