

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

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
&  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.-850/Del/2016, A.Y. 2009-10**

Whitefields International (P) Ltd. D-5/5, Vasant Vihar New Delhi PAN : AAACW2721M	Vs.	ACIT Central Circle-27(1) New Delhi
<b>Appellant</b>		<b>Respondent</b>

Assessee by : None  
Revenue by : Sh. Jagdish Singh, Sr. DR

**ORDER**

**PER ANADEE NATH MISSHRA, A.M.:**

(A) This appeal has been filed by the Assessee against the impugned appellate order dated 18.11.2015 passed by Learned Commissioner of Income Tax (Appeals)-22, New Delhi [in short, "Ld. CIT(A)"] pertaining to Assessment Year 2009-10. The Assessee has raised following grounds of appeal :-

- 1) *"The addition of Rs. 81,75,000/- on account of unexplained share application money made to the returned income by the Ld. Assessing Authority u/s 68 of the act is based on surmise and conjunctures and is arbitrary, against the facts and bad at law.*

- 2) *The addition of Rs. 1,87,20,000/- on account of increase in unsecured loan made to the returned income by the Ld. Assessing Authority u/s 68 of the act is based on surmise and conjunctures and is arbitrary, against the facts and bad at law.*
- 3) *The disallowance of Rs. 1,25,100/- made by the Ld. Assessing Authority on account of payment of Bonus contending such sum was otherwise payable as profits or dividends is arbitrary, against the facts and bad at law.*
- 4) *The disallowance of Rs. 90,49,493/- made by the Ld. Assessing Authority on account of expenses claimed by the assessee under the various heads is based on surmise and conjunctures and is arbitrary, against the facts and bad at law.*
- 5) *The appellant craves leave to add, to amend, to alter, to substitute or withdraw any of the Grounds of the Appeal on or before the date of disposal of the appeal.*
- 6) *The Order is against the law and facts of the case.”*

(B) This appeal was filed on 18/02/2016; whereas impugned order of Ld. CIT(A) was communicated to the assessee on 07/12/2015. Thus, this appeal is barred by limitation having regard to time limit prescribed u/s 253(3) of I.T. Act. Vide letter dated 16/02/2016 of M/s. Nath Ahuja & Co., Chartered Accountants and affidavit of Mr. Sanjeev Arora, Chartered Accountant, the delay in filing of the appeal has been sought on the ground that aforesaid Mr. Sanjeev Arora (to whom task for preparing and submission of appeal was entrusted) was out of town due to some personal problems/reasons. However, on perusal of records, we find that there is no authorization by assessee, appointing either aforesaid M/s. Nath Ahuja & Co. or aforesaid Mr. Sanjay Arora to act or state on behalf of the

assessee for the purposes of appellate proceedings in Income Tax Appellate Tribunal. Therefore, we decline to take cognizance of the aforesaid letter of M/s. Nath Ahuja & Co. and affidavit of Mr. Sanjay Arora. Accordingly, this appeal is dismissed in limine, being barred by limitation having regard to provisions of S. 253(3) of I.T.Act.

(C) However, we have considered the disputed issues in this appeal, on merits too. The relevant portion of the assessment order dated 27/12/2011 is reproduced as under :-

2. It may be noted at the outset that the assessee refrained from filing of relevant details and documents on many issues on the plea that the said documents along with other important document had been seized by the CBI from the premises of the assessee on 12.10.2009 and the assessee was trying its best to get the seized document released and as soon as the documents were obtained, the same would be submitted. In this context attention is drawn to order dated 23.07.2010 of the Spl. Judge/ CBI/PHC/ND Sh O.P.Saini in the case of CBI Vs Yogesh Malhotra (Director of the assessee company) and Others a copy of which was furnished by the assessee along with its letter dated 18.10.2011. As per the said order, the CBI court has ordered that it had no objection to giving photocopies of seized documents required by the accused applicant for business purposes provided that cost of the photocopying was borne by the accused applicant. It has also been stated by the court that the photocopies would be made available to the applicant within 10 days from 23.07.2010. In view of this fact the contention of the assessee that the seizure of the required document by the CBI did not make it possible to submit the same is not acceptable. A copy of the order dated 23.07.2010 of the Spl. Judge/ CBI/PHC/ND Sh O.P.Saini in the case of CBI Vs Yogesh Malhotra (Director of the assessee company) and Others is being annexed at page 2 herewith and is being made a part of the assessment order.

IN THE COURT OF Sh. O. P. SAINI, SPL. JUDGE, CBI  
NEW DELHI

Case No. RC-BD/2009-11-0015, CBI, New Delhi

CBI Vs. Yogesh Malhotra & others

23.07.2010

Present: Sh. K. K. Goel PP for CBI alongwith IO Inspector  
Sunder Singh.  
Sh. R. K. Handoo Advocate for applicant/ accused.  
Reply filed. Copy supplied. Heard. It is submitted by  
Sh. R. K. Handoo Advocate that all the documents mentioned in

annexure-A to the application were seized by the CBI during the search from the premises of the applicant/ accused. However, the documents mentioned in paragraph 7 of the application are required by the applicant/ accused for his business purposes and applicant/ accused would be satisfied only if photocopies of the documents mentioned in paragraph 7 of the application are supplied to him, at his own expenses.

I.e. P<sup>2</sup> has no objection to it if the photocopies of documents are done at the expenses of the applicant/ accused. Prayer allowed. The photocopies of documents mentioned in paragraph 7 of the application be returned to the applicant/ accused, by getting the same photocopied at his own expenses within ten days from today, on a date mutually convenient to both parties.

3. During the year the assessee was engaged in the business of export of rice and other commodities.

4. The opening balance of share application money as per the balance sheet for the year was Rs.34.79 lakh and the closing balance was Rs. 116 crores. No satisfactory detail explaining the source of increase in share application money of around 81.75 Lacs during the year was filed by the assessee during the assessment proceeding despite specific query in this regard through notices and questionnaires. The only explanation that was filed vide letter dated 08.08.2011 was that the increase was due to fresh allotment of shares. The onus cast on the assessee to prove the identity of the share applicants, genuineness of the transactions and creditworthiness of share applicants despite adequate opportunity has not been established. As per discussions in para 2 above and the order of Spl. Judge, CBI, it is clear that the assessee could have obtained all the details from the CBI if it so desired and taken it in its possession, thereby implying, that the assessee has willfully not produced the said details. Even in the absence of documents taken away by the CBI, the assessee would be expected to have details of share applicants because the company is not one in which the public is substantially interested and is one which is in fact a closely held company. In view of the above fact there is no other alternative left than to add the amount of Rs. 81,75,000/- u/s 68 of the I.T.Act, 1961. As it is apparent that there is concealment of income by the assessee by furnishing of inaccurate particulars in the return of income and accompanying documents. Penalty proceedings u/s 271(1)(c) of the I.T.Act is therefore required to be initiated.

**Addition Rs.81,75,000/-**

5. The opening balance of unsecured loans as per the balance sheet for the year, received from directors and their relatives was only Rs.80,000/-. The closing balance of unsecured loans at the end of year is of Rs.1.88 crores. The assessee was required

specifically to prove the genuineness of source of unsecured loans by furnishing documents and details relating to identity of the givers of loan, genuineness of the transactions and creditworthiness of the loans givers. Despite adequate opportunity through notices and questionnaires dated 15.09.2010, 25.11.2011 and 08.12.2011, the assessee did not furnish the required details of documentary evidence. The onus cast on the assessee in this regard is thus not discharge by it. As per discussions in para 2 above and the order of Spl. Judge, CBI, it is clear that the assessee could have obtained all the details from the CBI if it so desired and taken it in its possession, thereby implying, that the assessee has willfully not produced the said details. In the facts and circumstances of the case there is no alternative left but to add the amount of Rs.1,87,20,000/- u/s 68 of the i.T.Act, 1961 while computing the income of the assessee. As it is apparent that there is concealment of income by the assessee by furnishing of inaccurate particulars in the return of income and accompanying documents. Penalty proceedings u/s 271(1)(c) of the I.T.Act is therefore required to be initiated. **Disallowance Rs. 1,87,20,000/-**

6. The opening balance of sundry creditors is Rs.1.32 crores and closing balance is Rs.16.01 crores. The sales has increased from 47.02 crores to 107.06 crores. The increase in sundry creditors vis-à-vis the increase in sales is phenomenally high to examined in the light of the proportion of increase between sales and sundry creditors. Onus has been cast on the assessee in specific terms vide notices and questionnaires dated 15.09.2010, 25.11.2011 and 08.12.2011 to furnish the list of top sundry creditors along with their confirmations of their outstanding balances. However, the assessee has taken refuge behind the CBI search on its premises and has not furnished the required details and confirmations. In this age of computerization and heightened technology, it is highly unlikely that the assessee would not be having details regarding its major sundry creditors despite the CBI action in its case. As per discussions in para 2 above and the order of Spl. Judge, CBI, it is clear that the assessee could have obtained all the details from the CBI if it so desired and taken it in its possession, thereby implying, that the assessee has willfully not produced the said details. Further, It is not easy to accept that the major creditors of the assessee would not be in touch with it regarding payment of the outstanding balances or that partial payment has not already been done by assessee in accordance with the figures of sundry creditor balances available with the assessee. In view of the non-submission of confirmation and other relevant details and documentary evidence, it is being considered necessary to make addition equal to 5% of the increase in sundry creditor balance in order to plug any probability of leakage of revenue. The increase in sundry creditor balance during the year from the opening balance of Rs.1,32,42,363/- to the closing balance is of Rs.16,01,58,664/- in respect of trade creditors as reflected at schedule 11 to the balance sheet is of Rs.14,69,16,301/-. Five percent of the same which comes to Rs.73,45,815/- is therefore being added for the purpose of computing the income of the assessee for the year. As it is apparent that there is concealment of income by the assessee by furnishing of inaccurate particulars in the return of income and accompanying documents. Penalty proceedings u/s 271(1)(c) of the I.T.Act is therefore required to be initiated.

**Addition Rs.73,45,815/-**

7. Direct expenses cited at schedule 18 to the profit and loss account include demurrage expenses which is paid to the customs department as a penalty for over use of container facility and storage depot. The assessee has not been able to satisfactorily establish that such expense is not penal in nature or is allowable under any relevant provisions of the Act. In view of this facts, the concerned penal payment of Rs.15,02,350/-

is being disallowed under section 37 of the I.T.Act. As it is apparent that there is concealment of income by the assessee by furnishing of inaccurate particulars in the return of income and accompanying documents. Penalty proceedings u/s 271(1)(c) of the I.T.Act is therefore required to be initiated.

**Addition Rs.15,02,350/-**

8. As per audit report in form 3CD, point number 16 (a), payment of bonus where such sum was otherwise payable as profits or dividends is of Rs.1,25,100/-. As per the provisions of section 36(1)(ii) is required to be disallowed. As it is apparent that there is concealment of income by the assessee by furnishing of inaccurate particulars in the return of income and accompanying documents. Penalty proceedings u/s 271(1)(c) of the I.T.Act is therefore required to be initiated.

**Disallowance Rs.1,25,100/-**

9. As per tax audit report in form 3CD point number 17(f), the amounts inadmissible under section 40 (a) is of an amount of Rs.1,28,53,627/-. Since the assessee does not appear to have added it back to the computation of income, the same is being disallowed while computing the income of the assessee for the year. As it is apparent that there is concealment of income by the assessee by furnishing of inaccurate particulars in the return of income and accompanying documents. Penalty proceedings u/s 271(1)(c) of the I.T.Act is therefore required to be initiated.

**Disallowance Rs.1,28,53,627/-**

10. As per audit report in form 3CD point number 21 (i)(A)(b), professional expenses to be disallow under section 43 (a) is to the tune of Rs.59,134/-. Since the assessee does not appear to have added it back to the computation of income, the same is being disallowed while computing the income of the assessee for the year. As it is apparent that there is concealment of income by the assessee by furnishing of inaccurate particulars in the return of income and accompanying documents. Penalty proceedings u/s 271(1)(c) of the I.T.Act is therefore required to be initiated.

**Disallowance Rs.59,134/-**

11. The interest payment on unsecured loans is a round figure of Rs.1,10,00,000/- (schedule 22 to profit and loss account). The opening balance of unsecured loans is Rs.52,47,010/- while the closing balance is Rs.2,53,12,633/-. Looking to the specific quantification of the opening and closing balances, it appears very strange that the interest on unsecured loans would be a round figure of Rs.1,10,00,000/-. Even the loans and advances shown as current assets in the balance sheet have been specifically quantified at Rs.7,61,33,008/- (opening balance) and Rs.3,82,30,680/- (closing balance).

Despite adequate opportunity, the assessee is not able to justify the payment of a round figure interest payment of Rs.1,10,00,000/-. Onus cast on the assessee in this regard has not been properly discharged. It is seen from schedule 4 to the balance sheet giving details of unsecured loans that the closing balance of unsecured loans is Rs.25312633/- as against the opening balance of Rs.5247010/-. The unsecured loans have been raised during the year mostly from directors and their relatives and to some extent from banks. The closing balance of unsecured loans raised from directors and their relatives is Rs.18810802/- as against opening balance of only Rs.80,000/-. The open market interest rates from banks and other sources ranges between 12% to 18% per annum. In the facts

and circumstances of the case an average rate of 15% is being considered as appropriate for calculating the interest payment made by the assessee to the givers of unsecured loans, comprising directors and their relatives, banks and others. The closing balance of unsecured loans is Rs.25312633/-, 15% of the same which works out to be Rs.37,96,895/- is being allowed as reasonable interest payment in respect of unsecured loans and the balance claim of interest payment of unsecured loans of Rs.72,03,105/- is being disallowed as excess and unreasonable claim of interest payment expenses. As it is apparent that there is concealment of income by the assessee by furnishing of inaccurate particulars in the return of income and accompanying documents. Penalty proceedings u/s 271(1)(c) of the I.T.Act is therefore required to be initiated.

**Disallowance Rs.72,03,105/-**

12. The nature of business of the assessee is the same as compared to the earlier assessment years. However under the following heads of expenses the assessee has claimed substantial expenses, although nil expenses were claimed under these head in the earlier years.

S.N	Particulars	Amount (Rs.)
1	Inspection Charges	10,60,824/-
2	Ocean Freight	3,89,73,456/-
3	Shipment Clearing	14,78,248/-
4	Screening and Designing	3,73,502/-
5	Transportation	2,28,30,715/-
6	Packing expenses	28,27,830/-
7	Fair and Exhibition	22,19,089/-
8	Discount paid	2,07,31,261/-
	<b>Total</b>	<b>9,04,94,925/-</b>

12.1 The onus cast on the assessee to justify the genuineness and reasonableness of the expenses, reliability of these expenses to the assessee's business, actual incurrence of the expenses etc. could not be discharged by the assessee despite ample and adequate opportunity vide various notices and questionnaires and discussions during hearings. In view of this facts, it is being considered necessary to disallow an amount equal to 1/10<sup>th</sup> of the sum of Rs.9,04,94,925/- which works out to Rs.90,49,493/- to plug any probability of leakage of revenue on this account. As it is apparent that there is concealment of income by the assessee by furnishing of inaccurate particulars in the return of income and accompanying documents. Penalty proceedings u/s 271(1)(c) of the I.T.Act is therefore required to be initiated.

**Disallowance Rs.90,49,493/-**

13. As per tax audit report in form 3CD, interest on late payment of FBT for the A.Y 07-08 amounting to Rs.50,415/- and interest on income tax for assessment year 2007-08

amounting to Rs.4,74,634/- have been debited to profit and loss account. The said amounts do not appear to have been added back by the assessee in the computation of income and therefore the same is being disallowed while computing the income of the assessee for the year. As it is apparent that there is concealment of income by the assessee by furnishing of inaccurate particulars in the return of income and accompanying documents. Penalty proceedings u/s 271(1)(c) of the I.T.Act is therefore required to be initiated.

**Disallowance Rs.5,35,049/-**

(D) On merits, the relevant portion of the aforesaid impugned appellate order dated 18/11/2015 of the Ld. CIT(A) is reproduced as under :-

5.1. During the course of assessment proceedings, the appellant did not furnish any details on the ground that the corresponding documents were seized by CBI and were not in the possession of the appellant. The AO, however referred to the order dated 23.07.2010 of the special court of CBI, permitting the appellant company, to take photo copies of all documents at its own expenses. The said order has been reproduced on page 7 of the assessment order under appeal. As per the said order, the appellant was allowed to take photo copies of the seized documents within ten days from 23.07.2010. In view of this order of the CBI Court, the AO did not accept the appellant's explanation for not furnishing the required details and made the additions referred above. During the appellate proceedings, the appellant submitted that the seizure of documents was in connection with a case of corruption against some officials of **Punjab & Sind Bank** and the appellant company and its directors, were also covered for the reason that their accounts

were handled by the concern officials of Punjab & Sind Bank. The appellant, vide order shoot entry, dated 30.10.2015 was asked to explain the exact issues involved in the matter pending with CBI/Customs/DRI. However, the appellant

only stated as above, without giving any details of the exact nature of matter pending with those authorities. The appellant further, submitted that till date net charge sheet has been filed by CBI. Orally, it was stated that the CBI matter pertained to fake letters of credit.

6. During the course of appellate proceedings, the appellant filed ledger accounts of expenses, few case laws on the allowability of demurrage expenses and two confirmations signed by Shri Sumit Saluja, one of the directors of the company regarding payment of share application money of 81.75 lakhs and unsecured loans of Rs. 1,87,20,000/-. The appellant also filed bank statement of Shri Sumit Saluja's account no. 0011000135397 with HDFC Bank and account no. 02010010000988 with Kotak Mahindra Bank. The account with Kotak Mahindra Bank, is in the name of Shri Sumit Saluja, while the account with HDFC Bank is in the joint name of Shri Sumit Saluja and Mrs. Rupa Saluja. The share application money of Rs. 81.75 lakhs, is claimed to have been received from those two bank accounts. As regards, unsecured loans, the appellant furnished ledger accounts of *M/s K.R. Traders*, which has a closing credit balance of Rs. 1,87,30,802.50. There was an opening debit balance of Rs. 2,58,09,046.48 in the said account. The appellant also filed a bank statement of *M/s K.R. Traders* no. 04832000002506 with HDFC Bank. However, in the ledger account of *M/s K.R.*

*Traders*, money has come from various banks like *Kotak Mahindra Bank, PNB, Bank of Baroda, UCO Bank, Bank of Rajasthan, Punjab and Sind Bank*, etc. The entries pertaining to HDFC Bank, do not account for all the transactions. Moreover the association of *M/s K.R. Traders* and Shri Sumit Saluja has not been mentioned. Though the confirmation from Shri Sumit Saluja **PAN AWJPS1951R** has been filed for unsecured loan. It does not mention Shri Sumit Saluja as a

proprietor of M/s K.R. Traders. Shri Sumit Saluja filed his return of income with ITD Ward-18(3) on 31.03.2010. (E-acknowledgement No. 120152770310310)

7. On the strength of these two confirmations, the appellant submitted that share application money of Rs. 81.75 lakhs and unsecured loans of Rs. 187.26 lakhs has come from director i.e. Shri Sumit Saluja and, therefore, no addition of the said amount should be made.

7.1 The total of these two additions, comes to Rs. 2,68,95,000/- which is only 2.38% of the total receipts. If this is the unaccounted money of the appellant introduced in the form of loans/share application money, the net profit of the appellant will go up by 2.38%, which is not an unreasonable addition in net profit in a case where book results are not subject to verification. Though the appellant has filed confirmation from Shri Sumit Saluja for unsecured loans, the relationship between Shri Sumit Saluja and M/s K.R. Traders, has not been explained. Moreover, there are deposits / transfers/credits in bank accounts referred above before issue of cheques in favour of the appellant. This same

pattern exists for share application money. In such a situation, it was obligatory for the appellant to furnish the exact source of such deposits used for issue of cheque in favour of appellant, which has not been furnished. Consequently, the said addition is also confirmed and grounds no. 3 & 4 of the appeal are dismissed.

7.2 For the removal of doubts, it is clarified that these two additions have been confirmed on account of failure of the appellant to furnish complete evidence for establishing that this money was not unaccounted money generated from the business of appellant company and was in fact earned by

Shri Sumit Saluja from his sources, other than the appellant company, that the company is under investigation for LC fraud in collusion with bank officials further strengthens the finding that it was unaccounted money of the company which may have been generated by such fraud, and not personal money of Mr. Sumit Saluja. However, this finding will not prejudice any action which the AO, may take u/s 148 or otherwise in the case of Shri Sumit Saluja for AY 06-07, if otherwise, admissible as per law.

8. Ground no. 6 pertains to an addition of Rs. 15,02,350/- being demurrage expenses paid to Customs Department. The AO added the same by holding that this payment is in the nature of penalty for infraction of law. The appellant on the other hand submitted that demurrage charges are allowable as business expenditure in view of the following decisions:-

- i) *Mahalaxmi Sugar Mills Co. Ltd Reported in 157 ITR 683 (Del)*
- ii) *Imcola Exports Ltd., ITA No. 974 Mum 2009 of ITAT Mumbai, dated 31.08.2010.*

8.1 In the first case, the Hon'ble Delhi High Court held that demurrage charges paid to railways, was not a fine for infraction of any law but it is compensation for use of port facilities beyond the period, allowed and therefore, allowable u/s 37(1). In the second case, the Hon'ble Mumbai Tribunal held that demurrage charges paid, was a contractual payment for delay in loading of goods and, therefore, not a penalty for any infraction of law.

8.2 Respectfully following the above two decisions, the addition of Rs. 15,02,350/- is deleted and ground no. 6 of the appeal is **allowed**.

9. Ground no. 8 regarding the disallowance of Rs. 1,28,53,627/- u/s 40(a), in view of the tax audit report, column 17(i) for non deduction of tax as not being pressed and, therefore, the corresponding addition is confirmed and ground no.

8. is dismissed.

9.1 Ground no. 12 is regarding interest on late payment of Goods Service Tax and interest on Income Tax. The said ground has also not been pressed and therefore, **dismissed**.

9.2 It need to be clarified that both these additions contested in ground no. 8 & 12, have been correctly made and the appellant would not have succeeded even if this ground had been pressed.

10. Ground no. 10 pertains to a disallowance of interest payment to directors, their relatives, etc on unsecured loans. The said interest was claimed at Rs. 1,10,00,000/-. The AO doubted the round figure and allowed interest at 15% on the closing balance, the remaining interest which, came to Rs. 72,03,105/- has been disallowed. The appellant claimed that it is a case of double addition as an entire interest payment of Rs. 1,10,00,000/- was included in the addition of Rs. 1,28,53,627/-, confirmed in respect of ground no. 8 of this appeal. Since this addition has already been confirmed, further addition of Rs. 72,03,105/- amounts to double addition. Therefore, the corresponding addition is deleted. However, on merits, the addition is confirmed as the appellant has not furnished any evidence to justify the reasonableness of interest payment to directors, relatives and associate concerns. Therefore, ground no. 10 is decided in that manner. However, the said addition gets covered by addition of the same amount contested in ground no. 8, therefore, in the computation of income this amount of Rs. 72,03,105/- will not be added again and, therefore, the addition is deleted.

10.1 The disallowance of bonus of Rs. 1,25,100/- has been made by the AO on the basis of tax audit report. The appellant claims it to be Diwali bonus. However, in the tax audit report, the corresponding amount has been mentioned as bonus and not diwali bonus. Therefore, the addition of Rs. 1,25,100/- is confirmed and ground no. 7 of the appeal, is also **dismissed**.

11. The AO has made following addition, out of expenses:-

Rs. 90,49,493/-

- Contested in ground no. 11.

11.1 The AO also made an addition of sundry creditors of Rs. 73,45,815/- which is contested in ground no. 5. These additions have been made as the appellant did not furnish any evidence of corresponding expenditure. Even at the appellate stage, only the ledger accounts of expenses have been furnished.

11.2 As regards these two disallowance of expenses /sundry creditors the genuineness of expenses/sundry creditors, cannot be accepted in the absence of supporting evidence for expenses. However, both these additions relate to the same issue, i.e unverifiable claim of expenses. The total receipts of the appellant including other income which is 112.72 crores on which a net profit of 3.2% has been disclosed. The addition, out of expenses of Rs. 90,49,493/- amounts to only .8% of the total receipts and a net profit addition of .8% in a case where there is no evidence to support the book results cannot be considered unreasonable by any standards. *Therefore, the addition of Rs. 90,49,493/- is*

**confirmed** . The addition of Rs. 73,45,815/- is confirmed in principle but the amount will not be added separately in the computation of income as sundry creditors pertain to expenses only. Therefore, ground no. 5 is decided in that manner, while **ground no. 11 is dismissed**.

12. Ground no. 9 is related to an addition of Rs. 59,134/- which has been made on the basis of point no. 21(i)(A)(b) of tax audit report. The said column refers to the details of liability which existed on the first day of the previous year and was not allowed in the assessment of any preceding year and was not paid even during the current year. Therefore, this amount pertains to liability which was neither allowed in earlier years nor claimed in the present assessment year. Consequently, this addition is not required to be made in the current assessment year. As a result, the ground no. 9 of the appeal, is allowed.

(E) At the time of hearing, Revenue was represented by Shri Jagdish Singh, Senior Departmental Representative (“Ld. Sr. DR”, for short). However, none was present from the assessee’s side. In the absence of any representation from assessee’s side, at the time of hearing before us, we heard the Ld. Sr. DR; who relied upon the assessment order dated 27/12/2011 of Assessing Officer; under section 143(3)/144 of the I.T.Act and the aforesaid impugned appellate order dated 18.11.2015 of the Ld. CIT(A). After perusal of the materials on record ; we find that the Ld. CIT(A) has passed speaking order on merits. Relevant portion of the impugned order of the Ld. CIT(A) has already been reproduced in foregoing paragraph (D of this order. We find that the Ld. CIT(A) has given detailed reasons for his decision on merits in the aforesaid impugned appellate order dated 18.11.2015 of Ld. CIT(A). During appellate proceedings in Income Tax Appellate Tribunal (“ITAT”, for short) no material has been brought for our consideration to persuade us to take a view different from the view taken by

the Ld. CIT(A) in the impugned order on merit. After hearing the Ld. Sr. DR, and after perusal of materials on record, and further, in view of the foregoing discussion, we decline to interfere with the aforesaid impugned appellate order dated 18.11.2015 of Ld. CIT(A), and accordingly, this appeal is dismissed.

(F) In view of the foregoing; this appeal is dismissed being barred by limitation; and also on merits. Before we part; we explicitly clarify that the assessee will be at liberty to approach ITAT for restoration of the appeal in accordance with Proviso to Rule 24 of Income Tax (Appellate Tribunal), Rules, 1963. If the assessee does approach ITAT for restoration of the appeals in ITAT, the matter will be considered in accordance with law having regard to the facts and circumstances.

(G) In the result, appeal filed by assessee is dismissed.

Order pronounced in the open court on 20/02/20.

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

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

Dated: 20/02/20  
\*BR\*

Copy forwarded to:

1. Appellant
2. Respondent

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

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ITAT NEW DELHI

Date of dictation	17.02.2020
Date on which the typed draft is placed before the dictating Member	18.02.2020
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	