

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 3735/DEL/2017 (A.Y 2011-12)

Yashi Multimedia Pvt. Ltd. No. 5, Kartar Kunj, Golden Beach Society, Ruia Park, Juhu, Mumbai AAACY1714C (APPELLANT)	Vs	ITO Ward-27(4) New Delhi (RESPONDENT)
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Appellant by	Sh. Sanat Kapoor, Adv
Respondent by	Sh. H. K. Choudhary CIT DR

Date of Hearing	20.02.2020
Date of Pronouncement	02.03.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 19/12/2016 passed by CIT(A)-9, New Delhi, for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

1. *“That the Learned Commissioner of Income-tax (Appeals) erred in passing the order without giving sufficient opportunity to the Appellant for representation of its case. That the notices were not served upon the Appellant at its address as stated in the records.*

2. *That the observations made in the assessment order are contrary of the facts on record and the additions having been made on surmises and*

conjectures, the Learned Commissioner of Income-tax (Appeals) erred in upholding the observations made by the Assessing Officer, without looking into the assessment record to arrive at independent findings.

2.1 That the learned lower authorities failed to understand and appreciate the nature of assessee's business.

3. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) erred in upholding the addition of Rs. Rs. 20,59,521/- under the heads "Business Promotion" and "Gifts and Presentations".

4. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) erred in upholding the disallowance of Rs. 24,00,000/- being the amount paid to Shri Vivek Oberoi as "Professional Fee".

5. That on the facts and circumstances of the case and in law, the Learned, Commissioner of Income-tax (Appeals) erred in upholding the disallowance of Rs. 17,18,000/- being "Co-ordination Fees" and "Gym Training & Fitness Expenses".

6. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) erred in upholding the addition of Rs. 74,28,058/- u/s 68 of the Income-tax Act, 1961, on account of credit entries appearing in assessee's bank account.

7. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) erred in upholding the addition of Rs. 6,400/-.

8. That on the facts and circumstances of the case and in law, the

Learned Commissioner of Income-tax (Appeals) erred in upholding the disallowance of Rs. 28,249/- u/s 14A of the Income-tax Act, 1961.

9. *That on the facts and circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) erred in upholding the disallowance of Rs. 50,000/- under the head "Operating & Administrative Expenses".*

10. *That on the facts and circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) erred in upholding the disallowance of Rs. 2,36,000/- allegedly being Donations, without appreciating the nature of expenditure.*

11. *That on the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) ought to have held that no case is made out for initiation of penalty proceedings u/s 271(l)(c) of the Act."*

3. The assessee company is engaged in the business of providing creative services in the field of consumer retailing, entertainment, celebrity, management, celebrity healthcare management, media communication, production distribution or marketing of underground development music and other related services. During the hearing, the assessee company e-filed its return of income on 13/8/2012 declaring total income of Rs. 6,44,639/-. The assessee declared gross receipts of Rs. 2,36,64,376/- and after claiming various expenses declared net profit of Rs. 7,00,572/-(2.96%) as against that of previous year at Rs. 23,35,535/-(8.94%) against gross rates of Rs. 2,61,11,640/-. The Assessing Officer made addition of Rs. 6,400/- as the assessee could not file any documentary evidence as per the claim of the assessee. The Assessing Officer further made addition of Rs. 28,249/- in respect of disallowance u/s 14A of the Act. The Assessing Officer further made addition of Rs. 50,000/- in respect of expenditure not incurred wholly and exclusively for business purpose. The Assessing Officer made addition of Rs. 2,36,000/- in respect of donation made. The Assessing Officer made addition

of Rs. 20,59,521/- as regards to expenses made to the well known actor director of the film industry at their personal behalf. The Assessing Officer also made addition of Rs. 24, 00,00/- in absence of any justification for the payments made to Shri Vivek Oberio as remuneration under the head professional fees which is not allowable u/s 40A(2b) of the Act. The Assessing Officer further made disallowance of Rs. 17,18,000/- u/s 40 a(ia) of the Act and finally the Assessing Officer made addition of Rs. 74,28,058,- u/s 68 of the Income Tax Act, on in absence of any detailed explanation in respect of source of credit industries in its books of accounts.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the CIT(A) issued the notice which were not at all received by the assessee and the order of the CIT(A) is ex-parte order without giving hearing to the assessee. Therefore, the Ld. AR submitted that the matter may be remanded back to the file of the CIT(A) giving the assessee sufficient opportunity to represent his case on the basis of documents filed before the Revenue Authorities.

6. The Ld. DR submitted that proper opportunities were given to the assessee by the CIT(A) but the same was not availed by the assessee during the appellate proceedings before the CIT(A). The Ld. AR further submitted that CIT(A) has taken cognizance of all the evidences filed before the Assessing Officer and has given a finding on merit. In-fact, the CIT(A) has partly allowed the appeal of the assessee. Therefore, there is no need to remand back the appeal of the assessee to the file of the CIT(A).

7. We have heard both the parties and perused the material available on record. From the perusal of the order of the CIT(A), it appears that the CIT(A) is silent on whether the notices were properly served to the assessee or not.

Merely issuing notice does not allow the CIT(A) to proceed with the matter ex-parte. It will be appropriate to remand back this matter to the file of the CIT(A) for fresh adjudication by giving opportunity of hearing to the assessee. Needless to say, the assessee be given opportunity of hearing by following principal of natural justice. The appeal of the assessee is partly allowed for statistical purpose.

8. In result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 2nd MARCH, 2020.

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 02 /03/2020
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	20.02.2020
Date on which the typed draft is placed before the dictating Member	21.02.2020
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	02.03.2020
Date on which the final order is uploaded on the website of ITAT	02.03.2020
Date on which the file goes to the Bench Clerk	02.03.2020
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	