

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA ACCOUNTANT MEMBER

ITA No. 4953/DEL/2015
[A.Y 2006-07]

Total Integrated Design [I] Pvt Ltd
D - 105, Ground Floor
Defense Colony, New Delhi

Vs.

The Addl. CIT
Circle 16(1)
New Delhi

PAN : AAAC 3502 B

[Appellant]

[Respondent]

Date of Hearing : 25.02.2020
Date of Pronouncement : 26.02.2020

Assessee by : Ms. Gunjan Jain, CA
Revenue by : Shri S.N. Tripathi, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

With this appeal the assessee has challenged the correctness of the order of the Id. CIT(A) - 9, New Delhi dated 27.01.2015 pertaining to A.Y 2006-07.

2. The sum and substance of the grievance of the assessee is that the Id. CIT(A) erred in disallowing expenses amounting to Rs.

27,04,909/-, thereby enhancing the assessment in violation of provisions of section 251(2) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

3. The appeal has been filed late by 105 days. We have carefully gone through the affidavit filed by the assessee alongwith an application for condonation of delay. We are satisfied that the assessee was prevented by a reasonable and sufficient cause. Hence the delay is condoned.

4. Briefly stated, the facts of the case are that assessment has been framed u/s 144 of the Act vide order dated 29.12.2008. The main reason for framing an exparte assessment is that the notices issued to the assessee remained unserved. The Assessing Officer was left with no choice but to frame exparte assessment. Relevant findings of the Assessing Officer read as under:

"In its return of income the assessee has taken scoured loan of Rs.5,54,511/-, Unsecured loan of Rs. 1,98,516/-, liabilities of Rs. 25,72,590/- and Provisions of Rs. 65,801/-. In the absence of verification of these items on account of non cooperative attitude of the assessee. an amount of Rs.33,91,418/- (seemed loan of Rs.5i54.51 IM- Unsecured loan of Rs. 1.98.516/ +

Liabilities of Rs. 25,72,590/- + Provisions of Rs. 65,801/-.) is added to the income of the assessee being unexplained liabilities and treating them to have been arised during the current year under scrutiny. Net Addition Rs.33,91,41.8/-

The assessee has claimed Rs, 10235036/- as expenditures in its Profit R. Loss Account In the absence of verification of these expenses. 25% of the total expenditures claimed is disallowed and added to the income of the assessee. Net Addition Rs.25,58,759/-.

5. Accordingly, assessment was completed and taxable income was determined as under:

Income as per intimation u/s 143(1)	Rs. 12,77,9207-
Add. . Unexplained liabilities	Rs.33,91,4 1 87-
Add Disallowance out of total expenditure	Rs.25.58.759/-
Assessed lax able Income	Rs.72.28.09 77-"

6. The assessee agitated the matter before the Id. CIT(A) and furnished relevant documents in support of its claim. The Id. CIT(A) did call for remand report from the Assessing Officer but decided the appeal as under:

"In the assessment order, the A.O. has made an addition of Rs.33,91,418/- towards loans and liabilities etc., and an addition of Rs.25,58,759/- towards disallowance of 25% of expenses. Apart from the amounts to be added as per discussion in the above paras, no further disallowance of expenses is justified, as in the remand reports, the A.O. has not brought any material on record to controvert the explanation furnished by the appellant and justify the addition made. In view of the above discussion, expenditure towards penalty for delay in service tax (Rs.37,819/-), delay in payment of TDS (Rs.4,042/-) and technical fees (Rs.27,04,909/-) are to be disallowed and added to income, and the remaining additions are deleted. In the assessment order, the A.O. has made total addition of Rs. 59,50,177/- (33,91,418 + 25,58,759). Consequently, the appellants get relief of Rs. 32,03,407/- (59,50,177 - 27,04,909 - 37,819 - 4,042). The Grounds are accordingly, partly allowed."

7. A perusal of the aforesaid findings of the ld. CIT(A) reveals that it is neither here nor there. It can be seen from the assessment order that two specific additions have been made by the Assessing Officer - one in respect of unexplained liabilities and second - 25% out of total expenditure claimed by the assessee. However, the ld. CIT(A) confirmed the additions to the extent of Rs. 27,04,909/- which is in respect of technical fees. This means that the ld. CIT(A) has enhanced

the disallowance of expenditure in violation of provisions of section 251(2) of the Act.

8. Moreover, before us, the ld. counsel for the assessee stated that the address has been changed and the new address has been furnished. In our considered opinion, both the lower authorities have not appreciated the facts of the case in true perspective. In the interest of justice and fair play, we deem it fit to restore the entire appeal to the file of the Assessing Officer. The Assessing Officer is directed to frame a de novo assessment after giving reasonable opportunity of being heard to the assessee.

9. The assessee has furnished the following new address as under:

D - 105, Ground Floor
Defense Colony, New Delhi

10. Accordingly, we deem it fit to direct the assessee to appear before the Assessing Officer on 14.05.2020 without waiting for notice from the Assessing Officer. The Assessing Officer is, accordingly, directed to communicate with the assessee at the aforesaid new address. With the above directions, the appeal of the assessee is treated as allowed for statistical purposes.

11. In the result, the appeal of the assessee in ITA No. 9626/DEL/2019 is allowed.

The order is pronounced in the open court on 26.02.2020.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 26th February, 2020.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. 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	