

IN THE INCOME TAX APPELLATE TRIBUNAL  
 DELHI BENCH: 'B', NEW DELHI  
 BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
 AND  
 SHRI O.P. KANT, ACCOUNTANT MEMBER  
 (THROUGH VIDEO CONFERENCE)

ITA NO. 212/DEL/2017  
 A.Y. : 2013-14

M/S DELUXE ALLOYS PVT. LTD. 303B, APRA PLAZA, PLOT NO. 28, ROAD NO. 44, PITAMPURA, NEW DELHI – 110 044 (PAN: AAACD4351Q)	Vs.	DCIT, CIRCLE 21(1), NEW DELHI
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Rajiv Saxena, Adv. ; Sh. Ravi Pratap Mall, Adv. ; Ms. Sumangla Saxena, Adv. & Sh. Shyam Sunder, Adv.
Department by	Sh. M. Barnwal, Sr. DR.

**ORDER**

**PER H.S. SIDHU, JM:**

This appeal filed by the Assessee is directed against the impugned order dated 21.12.2016 passed by the Ld. CIT(A)-28, New Delhi in relation to assessment year 2013-14 on the following grounds:-

*"1. On the facts and circumstances of the case, the order passed by the Ld. Commissioner*

*of Income Tax (Appeals) and Ld. AO is bad both in the eye of law and on facts.*

*2. On the facts and circumstances of the case, the order passed in gross violation of the principle of natural justice being sufficient opportunity of being heard is not provided to the appellant and thus is illegal and untenable in the eyes of Law.*

*3. On the fact and circumstances of the case, Ld. CIT-A has erred in confirming the additions of Rs.6,43,30,175/- made by the Ld. AO in the assessment order under best judgment assessment u/s 144 of the Act.*

*4. (i) On the facts and circumstances of the case, Ld. CIT(A) has erred in eyes of law and facts of case in confirming the additions of Rs.5,18,70,453/- made by the Ld. AO by applying Gross Profit rate of 11%, being G. P. Rate declared in preceding assessment year, on the total turnover of the assessee.*

*(ii) On the facts and circumstances of the case, Ld. CIT(A) has erred in eyes of law and facts of case by confirming the addition of Rs.24,09,722/- made by Ld. AO by not allowing adjustment of loss of Rs.17,81,127/- against*

*income from capital gain and income from other sources.*

*(iii) On the facts and circumstances of the case, Ld. CIT(A) has erred in eyes of law and facts of case in confirming the addition of Rs.1,00,50,000/- made by the Ld. AO by not allowing indexed cost of acquisition of Rs.88,97,468/-.*

*5. In alternative and without prejudice to the above grounds, although the assessment was framed ex-parte u/s 144 of the Act, however additions were made without following the principle of best judgment assessment as envisaged in the law and settled by the judiciary.*

*6. That the appellant craves leave to add, amend or alter any of the grounds of appeal."*

2. Assessee has also filed the additional grounds of appeal vide letter dated 20.02.2020 which read as under:-

**"PERMISSION TO SEEK, RAISE, URGE AN ADDITIONAL GROUND OF APPEAL**

*The aforesaid appeal is fixed for hearing on 10-02-2020. During the course of hearing, it was argued that assessment u/s 144 is bad in law as notice u/s 143(2) was not served within the stipulated period as provided under the statutory provision. Hence, assessment made is required to be quashed. The Hon'ble Bench has asked the Ld. DR to produce the assessment record as directed by the Hon'ble Bench on the earlier date of hearing for which Ld. DR sought time and the same was granted by the Hon'ble Bench. It is found necessary that apart from the legal grounds already taken, following specific additional ground of appeal may also be raised which are purely legal and can be raised at any time as they do not require any additional facts or material other than the assessment record or already on record.*

*2 It is submitted that on 04-12-2019 an application for inspection was also moved before the Dy. CIT, Central Circle-20, New Delhi, requesting inspection of the assessment records. Inspection was made and from the inspection of the assessment records because notices have not been served on the assessee i.e. on the Principal Officer as provided under the provision. Due to which ex-parte*

*assessment has been made u/s 144 of the IT Act. After perusing the assessment order it was noticed that assessing officer himself has admitted that notice u/s 143(2) was issued on 19-08-2016 (incorrectly stated instead on 19-08-2015), further notices u/s 142(1) was also issued on 19-08-2015 (Incorrectly stated instead of 19-08-2015) and 12-01-2016. These notices are beyond the time limit as provided under the statutory provision i.e. within six months from the end of the relevant assessment year, notice u/s 143(2) has to be served for initiating assessment proceedings. In the aforesaid circumstances, the appellant seeks the permission to raise, urge, amend and argue the ground no. I as under:-*

*The Ground no. 1 which may be read as under:*

- 1. That on the facts and circumstances of the case the order passed by the Ld. CIT and AO is bad both in the eyes of law and on facts because:*
  - a. They have failed to notice that before initiating assessment proceedings it is mandatory to serve notice u/s 143(2) of the Income Tax Act, 1961,*

*before the expiry of six months of the end of financial year in which the return is furnished.*

*b. The assessing officer has issued notice u/s 143(2) on 19-08-2015(incorrectly stated 19-08-2016) which is beyond the limitation period and any assessment thereafter is bad in law.*

*c. Merely issuance of a notice u/s 143(2) is not sufficient unless it is served on the assessee as provided in the relevant provision for completing the assessment.*

*d. The assessing officer has not provided reasonable and sufficient opportunity to the assessee before completing the assessment.*

*e. The Ld. CIT (Appeals) has also ignored these facts and despite making request for seeking time has not allowed reasonable and sufficient opportunity to the assessee.*

*f. The Ld. CIT (Appeals) has also failed to appreciate that assessee company has declared huge turnover and financial loss due to recession in the industry as well as various internal reasons for which it was necessary to grant sufficient time for submissions of details for which sufficient opportunity was not granted.*

*3. It is submitted that, the aforesaid additional ground is purely legal and related to the original ground*

*already raised and so deserves to be admitted in view of the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co, Ltd Vs. CIT reported in 229 ITR 383 and M/s Jute Corporation of India Ltd, vs. CIT reported in 187 ITR 688 (SC), Moreover, it is imperative that the instant ground be raised as it is necessary to consider that question in order to correctly assess the tax liability of the assessee.*

*4 In view of the aforesaid, it is prayed that, the assessee may be permitted to raise, urge, and amend the ground no.1 as an additional ground of appeal as submitted above, in support of its contention that, the instant assessment framed is non-est in law."*

3. Facts narrated by the Revenue Authorities are not disputed by both the parties, therefore, no need to repeat the same for the sake of convenience.

4. At the time of hearing, Shri M. Barnwal, Senior Departmental Representative stated that assessee has raised original grounds of appeal and also filed additional grounds of appeal vide letter dated 20.02.2020. He submitted that the impugned exparte orders were passed by both the revenue authorities, because assessee remained non-cooperative before the revenue authorities. He stated that if the Authorised Representative of the Assessee withdraw the additional grounds of appeal raised vide letter dated 20.02.2020, then

the original issues in dispute may be set aside to the Assessing Officer to adjudicate the same, afresh, as per law, after giving adequate opportunity of being heard to the assessee.

4.1 Shri Rajiv Saxena, Ld. Counsel for the assessee stated that the issues raised by the assessee in the additional grounds may also be sent back to the Assessing Officer to adjudicate the same, as per law, alongwith the original grounds of appeal for fresh adjudication. He undertakes to cooperate before the AO, if this Bench set aside the issues in dispute to the Assessing Officer.

5. We have heard both the parties and perused the orders passed by the authorities below as well as the contentions raised by the assessee in the original grounds of appeal and in the additional grounds of appeal filed with letter dated 20.02.2020 as reproduced above. We are of the view that no doubt that assessee remained non-cooperative before the AO as well as before the Ld. CIT(A), but in compliance of the statement of Ld. Sr. DR, the Ld. Counsel for the assessee filed the email letter dated 16.09.2020 in which he has withdrawn the additional grounds of appeal raised by the assessee vide its letter dated 20.02.2020. Keeping in view of the facts and circumstances of the present case and the orders passed by the revenue authorities alongwith the contentions raised by the assessee in the original grounds of appeal as well as additional grounds of appeal which the assessee has withdrawn vide email letter dated 16.09.2020. We are of the view that there is

no doubt that the AO has passed the assessment order u/s. 144 of the I.T. Act, 1961 and the Ld. CIT(A) has also passed the impugned order exparte. As per record, the present appeal came up for hearing before the Bench on 07.12.2018 and adjourned many-times. On 27.11.2019 the Bench has directed the Departmental Representative to produce the records of assessment, but the Department did not produce the same. On 15.06.2020, Ld. DR also sought time to file the proof of service of notice issued u/s. 143(2) of the Act and case was adjourned for 30.07.2020. But again on 30.07.2020, the Ld. DR did not produce the assessment records to prove the service of notice issued u/s. 143(2) of the Act and the case was adjourned for today i.e. 16.09.2020. Today also the record is not available. But Ld. Sr. DR made a statement that, if the Counsel for the assessee withdraw the additional grounds of appeal filed vide letter dated 20.02.2020, then the issues involved in the present appeal may be set aside to the AO to decide the same afresh, as per law, after giving opportunity to the assessee. Sh. Rajiv Saxena, Ld. Counsel for the assessee agreed to the same and filed a letter dated 16.09.2020 requesting for withdrawal of the additional grounds of appeal raised vide its letter dated 20.02.2020. Keeping in view the statement made by the Ld. Sr. DR for setting aside the issues in dispute to the AO and in view of the letter dated 16.09.2020 filed by the Ld. Counsel for the assessee for withdrawal of additional grounds of appeal and in view of the non-production of assessment records especially

proof of service of notice issued u/s 143(2) of the Act by the Department, in our considered opinion, this matter requires thorough investigation at the level of the Assessing Officer. Therefore, in the interest of justice, we set aside this matter to the AO with the directions to make the assessment, as per law, by giving full opportunity to the assessee for substantiating its claim before the AO. We also direct the Assessee through his Counsel to fully cooperate in the assessment proceedings in completing the same and not to take any unnecessary adjournment.

7. In the result, the Assessee's Appeal is allowed for statistical purposes.

The decision is pronounced in the Open Court on 16.09.2020.

Sd/-  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

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

"SRB"

**Copy forwarded to:**

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

Asstt. Registrar, ITAT, New Delhi