

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A-SMC", HYDERABAD

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER
(Through Virtual Hearing)

ITA No.2308/Hyd/2018		
Assessment Year: 2007-08		
K. Arvind, Hyderabad. PAN: AFCPK 8493 G	Vs.	DCIT, Circle-4(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Vivek N. Jain	
Revenue by:	Smt. Amisha Gupta, DR	
Date of hearing:	10/09/2020	
Date of pronouncement:	10/09/2020	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-1, Hyderabad in appeal No. 0182/CIT(A)-1, Hyd/2016-17/2018-19, dated 20/08/2018 passed U/s. 143(3) r.w.s 147 and U/s. 250(6) of the Act for the AY 2007-08.

2. The assessee has raised five grounds in his appeal which are extracted herein below for reference: -

- 1. The ld. CIT (A) and Ld. AO erred in law on facts in making disallowance U/s. 40(a)(ia) of the Act amounting to Rs. 15,52,793/- thereby assessing to total income of the assessee to the turn of Rs.*

- 30,99,764/- as against returned income amounting to Rs. 17,48,200/-.
2. *The Ld. AO assuming jurisdiction U/s. 147 of the Act without taking valid approval from appropriate authorities which is mandatory requirement of IT Act, 1961.*
 3. *The Ld. AO erred in law and on facts in passing order U/s. 147 of the Act without issuing notice U/s. 143(2) of the Act which is mandatory requirement of the Act and thereby, proceedings U/s. 147 are bad in law and void ab initio.*
 4. *Alternatively, and without prejudice to Ground No.2, the IT Authorities erred in law and on facts in making the disallowance U/s. 40(a)(ia) for non-deduction of TDS on advertisement expenditure and printing / stationery expenditure amounting to Rs. 15,52,793/- without appreciating that the second proviso to section 40(a)(ia) is declaratory and it has retrospective effect to w.e.f 01/04/2005 and as such the expenditure ought to have been allowed in current year.*
 5. *Alternatively, and without prejudice to Ground No.2 & 3, the ld. IT Authorities erred in law and on facts, in not restricting the disallowance U/s. 40(a)(ia) to the tune of 30% of total expenditure considering amended provisions of section 40(a)(ia) has retrospective effect.”*

3. At the outset, Ld. DR submitted that the assessee has raised fresh grounds in his appeal which were never raised before the Ld. AO nor the Ld. CIT (A). Hence, the Ld. DR pleaded that the matter may be remitted back to the file of the Ld.AO for fresh consideration. Ld. AR conceded to the submissions of the Ld. DR.

4. After hearing the rival submissions, I am of the considered view that the matter has to be re-examined by the Ld. AO afresh keeping in view all the fresh grounds raised by the assessee in his appeal. Therefore, in the interest of justice, I hereby remit the matter back to the file of the Ld. AO for de-novo consideration. Needless to mention that the assessee shall be give property opportunity of being heard.

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

Pronounced in the open Court on the 10th September, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 10th September, 2020.

OKK

Copy to:-

- 1) Shri K. Arvind, 2-1-290/5, Nallakunta, Hyderabad.
- 2) The Dy. Commissioner of Income Tax, Circle-4(1)(I/c), Hyderabad.
- 3) The Commissioner of Income Tax (Appeals)-1, Hyderabad.
- 4) The Pr. Commissioner of Income Tax -1, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File