

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

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 4709/DEL/2019 ( A.Y 2014-15)**

**ITA No. 4710/DEL/2019 ( A.Y 2015-16)**

**(THROUGH VIDEO CONFERENCING)**

Glair Infrastructure Ltd. C/o. M/s S G Jain & Co. 202- 204, Vinayak Complex, 76- Vijay Block, Laxmi Nagar New Delhi AAECG2308Q <b>(APPELLANT)</b>	Vs	DCIT Circle-10(1) C. R. Building, New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Vijay Pratap Singh, AR</b>
<b>Respondent by</b>	<b>Sh. Vipul Kashyap, Sr. DR</b>

<b>Date of Hearing</b>	<b>18.11.2020</b>
<b>Date of Pronouncement</b>	<b>25.11.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

These two appeals are filed by the assessee against the order dated 20/3/2019 passed by CIT(A)-22, New Delhi for Assessment Year 2014-15 & 2015-16 respectively.

2. The grounds of appeal are as under:- **ITA No. 4709/DEL/2019**

1. *“That on the facts and in the circumstances of case and in law, the Ld Officer/CIT (A)-22 erred in creating Illegal demand amounting to Rs. 34,71,837/-.*

**Ambivalent Assessment (charge not clear)**

2. *That on the facts and in the circumstances of case and in law, the Ld*

*CIT(A) erred in imposing subject demand u/s 143(3) amounting to Rs 34,71,837/-, assessee not received any notice for the same, and also no Assessment Order was served to the assessee, as no notice before the same was received by the assessee, and as per the order passed u/s 143(3) of I. T. Act 1961, proceeding was passed on 20-03-2019.*

*As stated above the assessee is not received the notice on the given address or the same may be delivered to some other personal, detail of the same was received by the assess on email on 25/3/2019 whereas CIT(A) consider value of Order of AO and passed the ex parte order on 20/3/2019 and created and dismissed the appeal and accepted the demand of Rs. 34,71,837/- . Further in the absence of clear information CIT(A) Passed inaccurate order as valid details are available will be shown to you at the time of hearing. Ld CIT(A) has notably used expressions "Appellant is not interested in pursuing the Appeal", thereby vitiating whole demand order on this limited count.*

**On Merits: Addition in para (3,4 & 5)conceived**

- 3. That on the facts and in the circumstances of case and in law, the Ld CIT erred in imposing addition made/accepted on account of addition of Opening Balances of CST Payable, TDS Payable, & service tax Payable amounting Rs. 11,40,715/- which was not relate to the assessment year in which the same has been added back.*
- 4. Ld. Officer/CIT(A) made/accepted disallowance of the interest on borrowing at Rs. 22,65,677/- for the interest free loan provided to the related/unrelated parties which transaction was totally in the nature of Business.*
- 5. Ld. Officer/CIT(A) made/accepted on the basis of Information received from AIR because the copy of registry not provided as the same was not available at the time of assessment proceedings which has been shown to the AO on later stage and confirmed that the consideration was already taken into the account in the fling of income tax return. Due to which the Income was taxed twice."*

**ITA No. 4710/DEL/2019**

1. That on the facts and in the circumstances of case and in law, the Ld Officer/CIT (A)-22 erred in creating Illegal demand amounting to Rs. 80,45,687/-.

**Ambivalent Assessment (charge not clear)**

2. That on the facts and in the circumstances of case and in law, the Ld CIT(A) erred in imposing subject demand u/s 143(3) amounting to Rs 80,45,687/-, assessee not received any notice for the same, and also no Assessment Order was served to the assessee, as no notice before the same was received by the assessee, and as per the order passed u/s 143(3) of I. T. Act 1961, proceeding was passed on 20-03-2019.

As stated above the assessee is not received the notice on the given address or the same may be delivered to some other personal, detail of the same was received by the assess on email on

25.03.2019, whereas CIT(A) consider value of Order of AO and passed the ex parte order on 20/3/2019 and created and dismissed the appeal and accepted the demand of Rs. 80,45,687/- . Further in the absence of clear information CIT(A) Passed inaccurate order as valid details are available will be shown to you at the time of hearing. Ld CIT(A) has notably used expressions "Appellant is not interested in pursuing the Appeal", thereby vitiating whole demand order on this limited count.

On Merits: Addition in para (4)conceived

3. That on the facts and in the circumstances of case and in law, the Ld CIT erred in imposing subject demand u/s 143(3) amounting to Rs 80,45,687/- without taking the Law into consideration for applicability of provision of TDS on the Expenses Disallowed in the case, expenditure disallowed are outside the ambit of the provision of deduction of TDS.

3. Both the appeals are identical hence we are taking the facts of A.Y. 2014-15. The assessee is engaged in the business of civil and road construction

works and supply of pre-engineering steel structure building. The assessee filed return of income on 30.03.2015 declaring income of Rs. 1,18,63,440/-. The Assessing Officer assessed the income of the assessee at Rs. 2,00,54,830/- thereby making various additions.

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

5. The Ld. AR submitted that the CIT(A) has not given the appropriate opportunity of hearing to the assessee to represent his case.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the CIT(A) has not given any categorical finding on merit of the case and also did not give sufficient opportunity of hearing to the assessee. Therefore, the CIT(A) was not right in dismissing the appeal of the assessee without giving proper opportunity of hearing. Hence, we are remanding back the entire issue to the file of the CIT(A) to be decided on merit. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Both the appeals of the assessee are partly allowed for statistical purpose.

8. In result, both the appeals filed by the assessee are partly allowed for statistical purpose.

**Order pronounced in the Open Court on this 25th Day of November, 2020.**

Sd/-

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 25/11/2020  
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI