

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "C" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SH.PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.3809/Del/2017
Assessment Year : 2012-13**

ISOLUX Engineering Pvt.Ltd., 1 st Floor, Trade Tower, Sector-65, Golf Course Extension Road, Haryana, Gurgaon-122018. PAN-AABCI9232Q	CORSAN & Construction Splendor	India	vs	DCIT, Circle-II, Gurgaon.
APPELLANT				RESPONDENT
Appellant by				None
Respondent by				Ms. Anima Barnwal, Sr DR
Date of Hearing				03.08.2021
Date of Pronouncement				03.08.2021

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2012-13 is directed against the order of Ld. CIT(A)-1, Gurgaon dated 30.03.2017. The assessee has raised following grounds of appeal:-

1. *"That on the facts and circumstances of the appellant's case, the learned Commissioner of Income tax (Appeals)-I, Gurgaon (hereinafter referred to as CIT(A) erred both in law and in fact in confirming the addition made in the assessment and directing the assessing officer (hereinafter referred to as AO) for withdrawal of TDS Credit of Rs.2,51,23,430/- out of the total TDS Credit of Rs. 4,82,24,056/- claimed by appellant.*
2. *That on the facts and in circumstances of the appellant's case, the Ld. CIT(A) erred both in law and in fact in confirming addition on account of transactions aggregating to Rs.1,95,78,754/- made with certain parties only on the basis that notices under section 133(6) issued by him were*

alleged to have not been responded to and also without examining and correlating all the relevant details related to transactions with those parties filed by the appellant before him during the course of appellant proceedings.

2.1 That the Ld. CIT(A) failed to appreciate the fact while confirming the above addition that all the evidences in respect of the transactions with above parties were duly filed by the appellant during the course of assessment /appellant proceedings, however same had not considered while confirming the above addition.

2.2 That the Ld. CIT(A) failed to appreciate the fact while confirming the above addition that appellant has also furnished all the additional documentary evidences as required by him during the course of appellant proceedings to substantiate the genuineness of transactions with these alleged parties.

2.3 That the Ld. CIT(A) grossly erred in confirming the above addition on surmises and conjectures and irrelevant considerations and in complete disregard to material on record and the evidences filed by the Appellant.

3. That on the facts and in circumstances of the appellant's case, the Ld. CIT(A) erred both in law and in fact in confirming addition of Rs. 1,95,78,754/- made with certain parties on the basis of the facts of appellant's case in the preceding assessment year which do not have any relation with the facts of assessment year under consideration.

3.1 That the Ld. CIT(A) failed to appreciate the legal position while confirming the above addition that every assessment year is a different assessment year and facts of one assessment year cannot be the basis of disallowance in another assessment year and specifically where facts of both assessment years are totally different.

3.2 That the Ld. CIT(A) grossly failed to appreciate the fact while confirming the above addition that facts of assessment year on the

basis of which addition was confirmed were totally different from the facts of the assessment year under consideration.

3.3 That the Ld. CIT(A) arbitrary presumed while confirming the above addition that appellant could not establish the genuineness of transactions made with alleged parties as return of income of alleged parties under consideration have not furnished and failed to appreciate the fact that appellant has furnished all the income tax details e.g. PAN no, Income Tax Ward Circle, TDS etc. of these parties.

3.4 That the Ld. CIT(A) grossly erred in confirming the above addition on surmises and conjectures and irrelevant considerations and in complete disregard to material on record and the evidences filed by the Appellant.

4. That on facts and in circumstances of the appellant's case the Ld. CIT(A) erred both in law and in fact in directing AO for withdrawing TDS Credit of Rs.2,51,23,430/- as same is beyond the power of Ld. CIT(A).

4.1 That the Ld. CIT(A) failed to appreciate the fact while directing AO for withdrawing of above TDS Credit that TDS Credit under consideration was an independent and different issue which was neither subject matter of appeal nor it was issue of assessment.

4.2 That the Ld. CIT(A) failed to appreciate the legal position while directing AO for withdrawing of above TDS Credit that Ld. CIT(A) is not empowered to withdraw any benefit which was not the subject matter of assessment.

4.3 That the Ld. CIT(A) failed to appreciate the legal position while directing AO for withdrawing of above TDS Credit that withdrawing any benefit which was not arise from the assessment order or which was outside the scope of assessment order is beyond the power of Ld. CIT(A)

4.4 That the Ld. CIT(A) grossly erred in withdrawing above TDS Credit on surmises and conjectures and irrelevant considerations and in complete disregard to legal and factual position of Appellant's case.

5. That without prejudice to above, in view of facts and circumstances of the appellant's case Ld. CIT(A) erred both in law and in facts in directing AO to withdraw TDS Credit of Rs.2,51,23,430/- without examining the explanation/ details/evidences submitted during the course of appellate proceedings.

5.1 That the Ld. CIT(A) has grossly erred in directing AO to withdraw above TDS Credit without considering the fact that the appellant has claimed the same on the basis of TDS Certificate issued by clients and TDS credit reflected in 26AS.

5.2. That the Ld. CIT(A) has grossly erred in directing AO to withdraw above TDS Credit without considering the fact that Section 199 is not a charging section and it contains only machinery provisions related to TDS credit.

5.3. That the Ld. CIT(A) has grossly erred in directing AO to withdraw above TDS Credit without appreciating the fact that the appellant has recognized the income as per the method of accounting consistently followed by him and there is no relation between the income recognition and TDS claimed.

5.4. That the Ld.CIT(A) has grossly erred in withdrawing credit of TDS on surmises, conjectures and irrelevant considerations and in complete disregards to legal position, material on record and the evidences filed by the appellant.

6. That the above said grounds are without prejudice to one other.

7. That the above said upholding of additions and directing to Assessing Officer to withdraw TDS Credit are arbitrary, capricious and wrong, these are based on conjectures and surmises.”

2. No one appeared on behalf of the assessee at the time of hearing. The notice of hearing was sent through speed post to the address provided by the assessee at “ISOLUX CORSAN India Engineering & Construction Pvt.Ltd., 1st Floor, Splendor Trade Tower, Golf Course Extension Road, Sector-65, Gurgaon-122018”, is returned back with remark “Closed”. The notice is returned back unserved. The assessee had not furnished any other changed address.

3. Ld. Sr.DR submitted that appeal of the assessee be dismissed.

4. We have heard the Ld. Sr. DR and perused the material available on record. In these facts and circumstances, it appeared that the assessee is not interested in prosecuting the present appeal. Since none appeared on behalf of the assessee despite service of notices therefore, following the decision of Hon’ble Supreme Court in the case of *CIT vs B. N. Bhattacharya (1997) 118 ITR 461 (SC)* and decision of Delhi Tribunal in the case of *CIT vs Multiplan India Pvt. Ltd. reported in 38 ITD 320 (Del.)*. We hereby dismissed the appeal of the assessee for want of prosecution.

5. In the result, the appeal of the assessee is dismissed.

Above decision was pronounced on conclusion of Virtual Hearing on 03rd August, 2021.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI