

*IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "B" KOLKATA*

**Before Shri Sanjay Garg, Judicial Member and
Dr. M.L.Meena, Accountant Member**

आयकर अपील सं.य/ ITA No. 2225/Kol/2018 Assessment Year:2013-14
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M/s. The Advertising Corporation of India Pvt. Ltd. 1 & 2 Old Court House Corner, Kolkata-700 001. PAN:AABCT7864K	<u>बनाम /</u> V/s.	I.T.O. Ward 4(2), Kolkata, Aaykar Bhavan, P-7 Chowringhee Square, Kolkata-700 069.
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

Hearing through video Conferencing

अपीलार्थी की ओर से/By Appellant	Shri Soumitra Choudhury, AR
प्रत्यर्थी की ओर से/By Respondent	Smt. Ranu Biswas, Addl. CIT, . DR
सुनवाई की तारीख/Date of Hearing	02-08-2021
घोषणा की तारीख/Date of Pronouncement	06 -08-2021

आदेश /O R D E R

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 16-08-2018 of the Commissioner of Income Tax (Appeals), 2, Kolkata [hereinafter referred to as 'CIT(A)'].

2. The assessee in this appeal has taken following grounds of appeal:-

1. For that on the facts of the case, the Ld. C.I. T. (A) has wrongly passed the appellate order without proper application of mind and failed to give proper opportunity of hearing which is against the Provision of Law and beyond his competent jurisdiction.

2. For that the Ld. CIT(A) has accepted the additional ground of appeal by following the judgement of Hon'ble Supreme Court in the case of Jute Corporation of India, 53 Taxman P-85, but ultimately dismissed the ground on a misunderstand of law, require a fresh hearing for the sake of natural justice, but the notice u/s. 143(2) of the I.T. Act was not served within statutory time as such the assessment.

3. For that the A.O. acted vindictively by making disallowances of business expenses without rejecting the method of accounting 'Mercantile' followed in earlier and subsequent assessment years and has not rejected the books of accounts and method of accounting, as such CIT(A) has acted beyond his competent jurisdiction by confirming the disallowance@20% of total expenses Rs.926,993/- i.e. Rs.183,399 /-.

4. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in adding to income Rs.26,78,770 / - based on wrong, perverse and decision without allowing proper opportunity of hearing, therefore, the said order is based on surmise, suspicion and conjecture and liable to be quashed and/ or cancelled.

5. For that on the facts of the case, the Ld. C.I.T.(A) has acted arbitrarily by adding to income based on 26AS report but 26AS report did not empower the authorities below to estimate the income as business income utmost it can be determine on net profit/ gross/profit.

6. For that the rental income of Rs.74,262/- has been taken into account, so the inclusion of the said income is amounted to double taxation not permissible to any taxation law.

7. For that the appelland reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.

3. This appeal of the assessee is time barred by 3 days. A separate application for condonation of delay has been filed. Considering the shortness of the delay period, and the reasons given, the delay in filing the present appeal is hereby condoned.

4. **Ground no. 1** is general in nature and does not require for specific adjudication.

5. **Ground no. 2;** The Ld. Counsel for the assessee has submitted that he does not press ground no. 2. Ground no. 2 is, therefore, dismissed as not pressed.

Ground no. 3

6. Vide ground no. 3 the assessee has contested the action of the lower authorities in making disallowance of 20% of the Misc. & other expenses. The issue has been discussed by the Learned Assessing Officer (in short, the Ld. AO) at page-2 of the assessment order. A perusal of the relevant part of the assessment order reveals that the Ld. AO noted the assessee had debited various expenses under various heads. The

Ld. AO observed that the following expenditure debited to the P & L account were not explainable or substantiable with the documents available with the assessee.

<i>Sl.No.</i>	<i>Head/sub-head</i>	<i>Amount debited (Rs.)</i>
01.	<i>Travelling & Conveyance</i>	<i>4,54,306</i>
02.	<i>General Charges</i>	<i>3,65,001</i>
03.	<i>Miscellaneous Expenses</i>	<i>9,26,993</i>

7. Though the Ld. AO noted that the assessee had submitted the details (break-up/ledger folio), photo copies of documents/vouchers etc., yet he observed that mere filing of documents was not enough and that by filing of the documents, the correctness of the same could not be established. He, therefore, made adhoc disallowance 20% of the afore mentioned expenditure.

The Ld. CIT(A) confirmed the disallowance so made by the Ld.AO

8. A perusal of the assessment order itself reveals that the assessee had furnished the requisite documents/ evidences relating to the incurring of the expenditure. But the Ld. AO without examining those documents and without pointing out any error in those documents has simply made the adhoc 20% disallowance, which is not justifiable in the eyes of law. The aforesaid disallowance made by the Ld. AO is, therefore, set aside/deleted. This ground is allowed in favour of the assessee.

Ground nos. 4,5 & 6

9. Vide ground nos. 4,5 & 6 the assessee has contested the addition of 26,78,770/- and further addition of Rs. 74,262/- on account of difference between the income reported by the assessee as compared to TDS information in Form 26AS. The Learned Counsel for the assessee invited our attention to the relevant part of the assessment order and the relevant documents filed and submitted that the income declared by the assessee is much more than that is decipherable from Form 26AS. The Learned Counsel for the assessee has submitted that the assessee has taken into account all the income as depicted in Form 26AS. The Learned Counsel has submitted that the assessee may be given opportunity to reconcile the figures of income as compared to the information in Form 26AS. The Learned Departmental

Representative (in short, the Ld. DR) has not objected to the same. This issue is, accordingly, restored to the file of the Ld. AO with a direction to verify the contention of the assessee from the accounts of the assessee and decide the issue afresh as per law.

10. **Ground no. 7** is general in nature.

In view of our findings above, the appeal of the assessee is treated as partly allowed.

Order pronounced in open court at the time of hearing on 06 -08-2021

Sd/-
(M.L.Meena)
Accountant Member

Sd/-
(Sanjay Garg)
Judicial Member

Dated 06-08-2021

**PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant/Assessee: M/s. The Advertising Corporation of India Pvt. Ltd 1 & 2 Old Court House Corner, Kolkata-700 001.
2. प्रत्यर्थी/Respondent-The I.T.O., Ward 4(2) Aaykar Bhawan, P-7 Chowringhee Square, Kolkata-700 069.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Senior Private Secretary/D.D.O