

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'C', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA Nos. 3104, 3105, 3106 & 3107/Del/2018
(Assessment Years : 2012-13, 2013-14, 2014-15 & 2015-16)

Hitchki Creation Pvt. Ltd. 1 st Floor, Plot No.9, 101, Community Centre, Sikka Complex, Preet Vihar, New Delhi – 110092 PAN No. AACCH 4195 C	Vs.	DCIT Central Circle Noida
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Somil Aggarwal, Adv. Shri Deepash Garg, Adv.
Revenue by	Shri Najmi, CIT-D.R.

Date of hearing:	10.08.2021
Date of Pronouncement:	18.08.2021

ORDER

PER BENCH :

These four appeals filed by the assessee are directed against the consolidated order dated 31.10.2017 passed by the Commissioner of Income Tax (Appeals)-IV, Kanpur relating to Assessment Years 2012-13, 2013-14, 2014-15 & 2015-16.

2. Before us, at the outset, Learned AR submitted that though the four appeals of the assessee are for four different assessment years, but the issue involved in all the four appeals are identical and he has common submissions to make. The aforesaid contention of Learned AR has not been controverted by Revenue. In view of the aforesaid facts, we for the sake of convenience proceed to dispose of all the four appeals by a consolidated order but for the sake of reference refer to the facts for A.Y. 2012-13.

3. The relevant facts as culled from the material on records are as under :

4. A search and seizure operation u/s 132 of the Act was conducted on 27.11.2014 in the case of Maconns, Meenu and Yadav Singh Group Noida covering its business premises and residences of Director their Family members and other business associates concerns and other key persons. During the course of search operation at the residence of Shri Kusum Lata and Yadav Singh, certain incriminating documents were found and seized. Based on the findings, survey u/s 133A of the Act was conducted at the premises of assessee. Thereafter notice u/s 153C of the Act was issued on 27.06.2016 and in response to which assessee electronically filed return of income for A.Y. 2012-13 on 05.12.2012 declaring total income at Rs.6,14,120/-. Subsequently, the case was taken up for scrutiny and thereafter assessment was framed u/s 153C r.w.s 143(3) of the Act vide order dated 28.12.2016 and the total income was determined at

Rs.8,07,020/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). CIT(A) vide a consolidated order dated 31.10.2017 for A.Y. 2012-13 to 2015-16 dismissed the appeals of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before us and has raised the following grounds of appeal:

- 1) *“That having regard to the fact and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and issuing of notice u/s 153C r/w section 143(3) of the Income Tax Act, 1961 by Ld. Assessing Officer and the consequent assessment proceedings in the case are bad in law and against the facts and circumstances of the case and the assessment framed is bad in law and against the facts and circumstances of the case and void-abinitio and basic jurisdictional conditions and pre-requisites under section 153C were not met and that too without giving any opportunity of hearing.*
- 2) *That in any case and in any view of the matter, the assessment framed under section 153C of the Act, is bad in law and against the facts and circumstances of the case.*
- 3) *That having regard to the fact and circumstances of the case Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in making an addition of Rs.49,353/-, allegedly on the ground that interest on loan debited to profit & loss account are not genuine / bogus and without any basis, material or evidence and more so when there was no incriminating material found as a result of search.*
- 4) *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.49,353/- is bad in law and against the facts and circumstances of the case.*
- 5) *That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. A.O. in making a total disallowance of Rs. 1,43,553/- u/s 43B, being TDS payable, Central Sales Tax payable, on the ground that the same were unpaid within the time prescribed and more so when there was no incriminating*

material found as a result of search.

- 6) *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 1,43,553/- is bad in law and against the facts and circumstances of the case.*
- 7) *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in passing the impugned order and that too without giving adequate opportunity of hearing and without observing the principle of natural justice.*
- 8) *That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.”*

5. Before us, at the outset, Learned AR submitted that though the assessee has raised various grounds but he would like to argue on Ground No.7.

6. He submitted that CIT(A) has passed an *ex parte* order without giving an adequate opportunity of hearing to the assessee and the order passed by CIT(A) is not on merits. He therefore fairly submitted that matter may be restored back to CIT(A).

7. Learned DR on the other hand supported the order of lower authorities.

8. We have heard the rival contentions and perused the materials available on record. Before us, the grievance of the assessee is that CIT(A) has passed an *ex parte* order without deciding the issue on merits. The perusal of the CIT(A) order

reveals that CIT(A) has not passed a speaking order and has not decided the issue on merits. Sub Section (6) of Section 250 of the I. T. Act mandates the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by deciding the appeal without considering the issue of merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no party should be condemned unheard. In view of these facts, we set aside the order of CIT(A) dated 31.10.2017 and restore the issue back to the file of CIT(A) for re-adjudication of the issues. Needless to state that CIT(A) shall grant adequate opportunity of hearing to both the parties. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the other grounds raised by assessee. **Thus the grounds of assessee are allowed for statistical purposes.**

9. In the result, appeal of the assessee for A.Y. 2012-13 is allowed.

10. As far as appeals for A.Ys. 2013-14, 2014-15 & 2015-16 are concerned, before us, both the parties have submitted that the facts and issues involved in all the four years are identical. We for the reasons stated hereinabove have allowed the appeal of assessee in A.Y. 2012-13. We for reasons as stated hereinabove while deciding the appeal for A.Y. 2012-13 and for similar reasons

restore the issue in all the three assessment years to the file of CIT(A). **We thus allow the grounds of assessee in all the three appeals for statistical purposes.**

11. In the combined result, all the four appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 18.08.2021

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 18 .08.2021

PY*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI