

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.7827/Del/2019
Assessment Year: 2016-17

Rajesh Kumar,
C/o H.No.651, FF, Sec.10A,
Near Meenakshi Public School,
Gurgaon,
Haryana.

Vs. ITO,
Ward-3(4),
Gurgaon.

PAN: BGWPK8807L

(Appellant)

(Respondent)

Assessee by	:	Shri M.R. Sahu, CA
Revenue by	:	Shri Ramesh Kumar, Sr. DR
Date of Hearing	:	24.08.2021
Date of Pronouncement	:	22.09.2021

ORDER

This appeal filed by the assessee is directed against the *ex parte* order dated 30th April, 2019 of the CIT(A)-1, Gurgaon, relating to A.Y. 2013-14.

2. Facts of the case, in brief, are that the assessee filed his return of income on 29th September, 2013, declaring total income at Rs.11,79,430/-. The AO completed the assessment u/s 143(3) on 18th March, 2016 determining the total income at Rs.11,92,980/- wherein he made an addition of Rs.13,550/- by restricting the depreciation on furniture at 10% as against 15% claimed by the

assessee. Subsequently, the AO noticed that the assessee had not deducted TDS on account of rent payment of Rs.24,38,520/- in respect of 14 shops as claimed by the assessee in the Profit & Loss Account. The AO accordingly issued notice u/s 154 of the IT Act. Rejecting the various explanations given by the assessee, the AO held that the assessee is liable to deduct TDS on the rent payment and added the same to the total income of the assessee in the order passed u/s 154 of the Act. Since the assessee did not appear before the CIT(A), the Id.CIT(A), in the ex parte order passed by him, upheld the action of the AO.

3. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

ō1. Legal Ground: AO had exceeded his jurisdiction in exercising his power under section 154 of the Act:

1.1 That having regard to the facts and circumstances of the case AO has erred in law and on facts by disallowing rental expenses on account of non deduction of TDS under section 40(a)(ia) that issue is not only debatable but also that mistake has to be established by a long drawn process of reasoning accordingly rectification order under section 154 is bad in law and invalid.

2.Merits of the case:

2.1 That having regard to the facts and circumstances of the case AO has erred in law and on facts by not specifying any reason and basis towards rejection of the explanation and documentary evidences produced before him towards non applicability of Tds provision on rental expenses thus addition of Rs.24,38,520/- in the rectification order passed under section 154 deserves to be deleted in full.

2.2. That having regard to the facts and circumstances of the case Ld. CIT (A) has erred in law and on facts by dismissing the appeal without offering adequate opportunity of hearing and without adjudicating the matter on merit basis.

3. That the appellant craves leave to add, alter or withdraw any ground or grounds of appeal before or at the hearing of the appeal.ö

3.1 The assessee has also raised the following additional grounds:-

ö1. That on the facts and in the circumstances of the case and in law, the AO erred in disallowing under section 40(a)(ia) the entire amount of rent paid without appreciating the fact that amendment brought in by the Finance (No.2) Act, 2014 w.e.f 1st April, 2015 in section 40(a)(ia) restricting disallowance up to 30% is applicable retrospectively having regard to the ratio of the decision of Hon'ble Delhi Tribunal in the case of" Muradul Haque Vs. ITO (2020) 117 taxmann.com 251 (Del. Trib)".

4. The ld. counsel for the assessee, referring to the additional ground, submitted that the same is purely a legal ground and, therefore, in view of the decision of the Honøble Supreme Court in the case of NTPC vs. CIT, 229 ITR 383, the same should be admitted.

5. After hearing both the sides, the additional ground raised by the assessee is allowed.

6. I have heard the rival arguments made by both the sides and perused the record. I find, the AO, in the instant case, invoked the provisions of section 154 on the ground that the assessee has not deducted TDS on the rent payment of Rs.24,38,520/- in respect of 14 shops as claimed by the assessee in the Profit & Loss Account. I find, the ld.CIT(A) upheld the action of the AO since there was nobody to represent the case despite issue of notice which was duly served on the assessee. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue back to the file of the CIT(A) with a

direction to give one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law including the additional ground raised before the Tribunal. The assessee is also hereby directed to appear before the CIT(A) and substantiate his case without seeking any adjournment under any pretext failing which the Id.CIT(A) is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 22.09.2021

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 22nd September, 2021.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi