

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “F” BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
SHRI O.P.KANT, ACCOUNTANT MEMBER**

**ITA No.1343/Del/2018  
Assessment Year : 2013-14**

PMS Flashmatics Pvt.Ltd., E/21, Sector-7, Noida, Uttar Pradesh-201301. PAN-AAECP0826A	vs	DCIT, Circle-2, Noida.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Sh. Ajay Kumar Mittal, CA	
<b>Respondent by</b>	Sh. Rohit Anand, Sr.DR	
<b>Date of Hearing</b>	05.10.2021	
<b>Date of Pronouncement</b>	05.10.2021	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee for the assessment year 2013-14 is directed against the order of Ld. CIT(A)-1, Noida dated 30.11.2017. The assessee has raised following grounds of appeal:-

*“The Appellant respectfully submits that:*

*On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals)-I, Noida [‘CIT(A)‘] has erred in passing the order under section (‘u/s’) 250 of the Income Tax Act, 1961 (‘Act’), dismissing the appeal filed by the Appellant and accordingly, confirming the order passed under section 143(3) of the Act by the Deputy Commissioner of Income Tax, Circle 2, Noida (‘AO’).*

*Each of the ground is referred to separately, which may kindly be considered independent of each other.*

**1. Ground No.1 - The order passed by the learned CIT(A) is bad in law**

1.1. *On the facts and circumstances of the case and in law, the order passed by learned CIT(A) is bad in law and liable to be quashed.*

1.2. *On the facts and circumstances of the case and in law, the order passed by the learned CIT(A) is in gross violation of principle of natural justice since opportunity of being heard was not provided to the Appellant before passing the order.*

1.3. *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in dismissing the appeal filed by the Appellant and coming to the conclusion that the Appellant is not serious to prosecute its case only on the basis that the Appellant file an adjournment letter on the first hearing of the case.*

**2. Ground No.2 - Disallowance of expenditure amounting to Rs 8,31,904/-**

2.1. *Without prejudice to Ground No.1, on the facts and in the circumstances of the case and in law, the learned AO has erred in disallowing the expenses amounting to Rs 8,31,904/- under section 35(2AB) of the Act without realising the fact that there was no claim made by the Appellant under section 35(2AB) of the Act.*

2.2. *On the facts and in the circumstances of the case and in law, the learned AO has passed the order without application of mind and appreciating the facts of the case.*

*The appellant craves leave to add, alter, amend or withdraw any of the above grounds at or before the hearing of the appeal.”*

2. Briefly stated facts are that the case of the assessee was picked up for scrutiny and assessment u/s 143(3) of the Income Tax Act, 1961 (“the Act”), was framed vide order dated 16.03.2016. The assessee is a Private

Limited company and engaged in the business of manufacturing and selling of flash lights. It was observed by the Assessing Officer that the assessee had claimed an expenditure of Rs.8,31,904/- in the form of Research & Development expenses. It was further observed by the Assessing Officer that the assessee sought deduction u/s 35(2AB) of the Act. The Assessing Officer observed that the deduction would not be available as the assessee was required to get the requisite approval from the Department of Scientific & Industrial Research, Government of India. Hence, the Assessing Officer made disallowance of Rs.8,31,904/- and added back to the income of the assessee. Thus, the Assessing Officer assessed the income of Rs.1,01,57,534/- against the income declared by the assessee of Rs.93,25,630/-.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who dismissed the appeal for non-prosecution vide the impugned order.

4. Now, the assessee is in appeal before this Tribunal.

5. At the outset, Ld. Counsel for the assessee took us through the impugned order and submitted that the appeal of the assessee was dismissed *ex-parte* without giving sufficient and effective opportunity of representing its case. Ld. Counsel for the assessee further submitted that the Assessing Officer also committed gross error in making the addition on the ground that the assessee had claimed deduction u/s 35(2AB) of the Act. He contended that infact no such deduction was claimed by the

assessee. He submitted that this fact can be verified from the “Income tax Return” filed by the assessee company.

6. Ld. Sr. DR opposed the submission of the Ld. Counsel for the assessee and submitted that the assessee was throughout negligent. He did not furnish the requisite details before Ld.CIT(A), therefore, Ld.CIT(A) was justified in dismissing the appeal of the assessee.

7. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. Ld.CIT(A) has dismissed the appeal vide impugned order dated 30.11.2017 by observing as under:-

*“In this case appeal was filed by the appellant through online. Notice was therefore, sent to the appellant asking the appellant to file necessary information and paper-book, etc., to substantiate its claim and to canvass its appeal as desired. However, in response to the notice sent, vide letter dated 31.07.2017 the counsel of the appellant submitted that his partner is out of station and sought adjournment. This not a valid reason for seeking adjournment. It appears that the appellant is not serious to prosecute its case, therefore, no meaningful purpose is to be served by keeping the appeal pending. The impugned assessment order is therefore confirmed in view of non prosecution of the appeal by the appellant. The appeal of the appellant fails and is dismissed.”*

8. From the above, it is clear that sufficient opportunity was not granted to the assessee. Further, it is the say of the assessee that it had not claimed any deduction u/s 35(2AB) of the Act. Therefore, it is stated that

the finding of the Assessing Officer is *ex-facie* contrary to the record and erroneous. Therefore, considering the totality of the facts and material placed before us, we set aside the impugned order and restore the assessment to the file of the Assessing Officer to frame assessment afresh after verifying the claim of the assessee that no deduction u/s 35(2AB) of the Act was claimed. In case no deduction was claimed, the Assessing Officer would delete the addition. The grounds raised in this appeal are allowed for statistical purposes only.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 05<sup>th</sup> October, 2021.

**Sd/-**

**(O.P.KANT)**  
**ACCOUNTANT MEMBER**

*\*Amit Kumar\**

Copy forwarded to:

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

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI