

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.6463/Del/2013
(ASSESSMENT YEAR 2003-04)

ITA No.6464/Del/2013
(ASSESSMENT YEAR 2004-05)

ITA No.6465/Del/2013
(ASSESSMENT YEAR 2005-06)

ITA No.6466/Del/2013
(ASSESSMENT YEAR 2006-07)

ITA No.6467/Del/2013
(ASSESSMENT YEAR 2007-08)

ITA No.6468/Del/2013
(ASSESSMENT YEAR 2008-09)

ITA No.6469/Del/2013
(ASSESSMENT YEAR 2009-10)

ITA No.6060/Del/2013
(ASSESSMENT YEAR 2010-11)

Assistant Director of Income Tax (Exemption), Trust Circle-II, Delhi.	Vs.	M/s Delhi Development Authority, C/o The Chief Accounts Officer, Delhi Development Authority, Vikas Bhawan, INA, New Delhi-110 023. PAN-AAALD 0031A
(Appellant)		(Respondent)

Appellant By	Sh. Y.K. Maghan, CA
Respondent by	Sh. G.C. Srivastava, Special Counsel for Revenue & Sh. Kalrav Mehrotra, Adv.

ORDER**PER ANADEE NATH MISSHRA, AM:**

(A) This set of eight appeals by Revenue have been filed against the impugned orders of Learned Commissioner of Income Tax (Appeals)-XXI, New Delhi, [Ld. CIT(A)", for short], dated 17.09.2013 for Assessment Years 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 and order dated 30.08.2013 for Assessment Year 2010-11. A consolidated order is hereby being passed, for the sake of brevity and convenience.

(A.1) Grounds taken by Revenue in these appeals are as under:

ITA No.6463/Del/2013 for Asst. Year 2003-04

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made u/s. 13(3) of the Act without considering the fact stated by the AO and giving reasons for the same.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO being 10% of the total expenditure claimed without considering the fact stated by the AO through the assessment order.*
3. *On the facts and in the circumstances of the case, the impugned order passed by the Ld. CIT(A) is perverse both in law and facts of the instant case.*
4. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

ITA No.6464/Del/2013 for Asst. Year 2004-05

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made u/s. 13(3) of the Act without considering the fact stated by the AO and giving reasons for the same.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO being 30% of the expenditure claimed without considering the fact stated by the AO through the assessment order.*
3. *On the facts and in the circumstances of the case, the impugned order passed by the Ld. CIT(A) is perverse both in law and facts of the instant case.*
4. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

ITA No.6465/Del/2013 for Asst. Year 2005-06

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made u/s. 13(3) of the Act without considering the fact stated by the AO and giving reasons for the same.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO being 30% of the total expenditure claimed without considering the fact stated by the AO through the assessment order.*
3. *On the facts and in the circumstances of the case, the impugned order passed by the ld. CIT(A) is perverse both in law and facts of the instant case.*
4. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

ITA No.6466/Del/2013 for Asst. Year 2006-07

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made u/s. 13(3) of the Act without considering the fact stated by the AO and giving reasons for the same.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO being 30% of the total expenditure claimed without considering the fact stated by the AO through the assessment order.*
3. *On the facts and in the circumstances of the case, the impugned order passed by the Ld. CIT(A) is perverse both in law and facts of the instant case.*
4. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

ITA No.6467/Del/2013 for Asst. Year 2007-08

1. *“On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition made u/s. 13(3) of the Act without considering the fact stated by the AO and giving reasons for the same.*
2. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition made by the AO being 30% of the total expenditure claimed without considering the fact stated by the AO through the assessment order.*
3. *On the facts and in the circumstances of the case, the impugned order passed by the Ld. CIT(A) is perverse both in law and facts of the instant case.*
4. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

ITA No.6468/Del/2013 for Asst. Year 2008-09

1. *“On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition made u/s. 13(3) of the Act without considering the fact stated by the AO and giving reasons for the same.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO being 30% of the total expenditure claimed without considering the fact stated by the AO through the assessment order.*
3. *On the facts and in the circumstances of the case, the impugned order passed by the Ld. CIT(A) is perverse both in law and facts of the instant case.*
4. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

ITA No.6469/Del/2013 for Asst. Year 2009-10

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made u/s. 13(3) of the Act without considering the fact stated by the AO and giving reasons for the same.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO being 30% of the expenditure claimed without considering the fact stated by the AO through the assessment order.*
3. *On the facts and in the circumstances of the case, the impugned order passed by the Ld. CIT(A) is perverse both in law and facts of the instant case.*
4. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

ITA No.6060/Del/2013 for Asst. Year 2010-11

1. *“On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition made u/s. 13(3) of the Act without considering the fact stated by the AO and giving reasons for the same.*
2. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition made being 10% of the expenditure claimed without considering the fact stated by the AO in the assessment order.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing relief to the assessee on account of prior period expenses.*
4. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in allowing relief to the assessee on the point of addition of amount being payable to Delhi Administration for land.*
5. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

(B) The assessee has been established by an Act of Parliament, namely, Delhi Development Authority Act, 1957. The assessee is registered u/s 12A of the Income tax Act ("IT Act", for short), with effect from 01.04.2022, vide order F. No. DIT-(E)/12A/2005-06/D-981/1300 dated 12.01.2006.

(C) The first issue, which is common in all these appeals is estimated disallowance @ 10% of the expenses under section 13(1)(c) read with section 13(3) of IT Act, on the ground that the estimated amount of disallowance pertained to utilization of income for the benefit of specified persons referred to in Section 13(3) of the Income Tax Act. The Assessing Officer ("AO", for short) invoked section 13(1)(c) of IT Act to make the aforesaid disallowance @ 10% of expenses, holding this estimated amount to be disallowable u/s 13(1)(c) read with section 13(3) of Income Tax Act. The disallowance was made by the Assessing Officer on estimation basis in the light of non-cooperation from the assessee's side in furnishing the requisite information in respect of application or use of income or property for use of specified persons referred to in section 13(3) of

Income Tax Act. The additions made by the Assessing Officer on this issue were deleted by the Ld. CIT(A) in respective impugned appellate orders for different assessment years. The Ld. CIT(A), while giving this relief to the assessee, observed that members of the governing council are also government servants, and there was no specific finding regarding any payments to any specified person. Revenue is in appeal before us, against the relief given by Ld. CIT(A) on this issue.

(C.1) During the appellate proceedings in Income Tax Appellate Tribunal, the Ld. Special Counsel for Revenue submitted that any misuse of fund in any charitable organization cannot be verified unless the desired information in respect of the persons mentioned under Section 13(3) of the Income Tax Act, 1961 ("Act") is provided. He also submitted that this information was in the exclusive knowledge of the Assessee. He further submitted that it was incorrect on the part of the Ld. CIT(A) to throw the burden on the Revenue for a material fact which could be disclosed only by the Assessee. It was furthermore submitted by the Ld. Special Counsel that whether there is any misuse of trust property or income of the

trust, is a matter of fact and requires enquiry and investigation. The Ld. Special Counsel submitted, still furthermore, that the order passed by the Ld. CIT(A) was perverse on the facts of the case and ought to be set aside. In this regard, it was submitted by him, moreover, that the Ld. CIT(A) had completely ignored the observations of the Assessing Officer, regarding non-cooperation and non-compliance made by the Assessee, in furnishing the relevant details of the specified persons, their PAN details and their interest in concerns/activities. The Ld. Special Counsel went on to submit that the Ld. CIT(A) had also failed to note that without such information being made available to the A.O., no proper factual finding could be rendered with respect to the benefits given to the specified persons under Section 13(3). The Ld. Special Counsel contended that the Ld. CIT(A) had passed order on a predetermined notion, that just because the members of the Assessee were government servants, they were immune to the provisions of IT Act. The Ld. Special Counsel also contended that the order of the Ld. CIT(A) be set aside for want of proper reasons, as erroneous and suffering from non-application of mind. On the other hand, the Ld.

Authorized Representative (“Ld. AR”, for short) for the assessee relied on the respective impugned appellate orders of the Ld. CIT(A).

(C.2) The second issue in these appeals before us is regarding the disallowance made by the Assessing Officer (“AO” for short) out of expenses, on the ground that the assessee failed to make full compliance with the requirements made by the AO, to produce the books of accounts, relevant supporting documents and other information/documents as prescribed by the AO. The quantum of disallowance was estimated by the Assessing Officer @ 10% of net expenditure, in Assessment Years 2003-04 & 2010-11; while the disallowance in Assessment Years 2004-05 to 2009-10 was @ 30% of net expenditure. The Ld. CIT(A) deleted these disallowances, holding that there was no evidence of any bogus bill or voucher, and that there was no finding that bills and vouchers were not verifiable. The Revenue is in appeal against the relief given by the Ld. CIT(A) to the assessee on this issue.

(C.2.1) In the course of appellate proceedings in Income Tax Appellate Tribunal, the Ld. Special Counsel for Revenue

submitted that the order passed by the Ld. CIT(A) was untenable on the facts of the case and ought to be set aside. In this regard, it was submitted that the Ld. CIT(A) had completely ignored the observations of the A.O. with regard to non-cooperation and non-compliance made by the Assessee, in furnishing the relevant details. The Ld. Special Counsel further submitted that the Ld. CIT(A) had rejected the disallowance made by the A.O. merely on the basis that there was no evidence of any bogus bill or voucher, since the same was not mentioned in the assessment order. The Ld. Special Counsel for Assessee furthermore submitted that, once the Assessee chose not to furnish the primary documents, the onus could not be shifted to Revenue to show that there were unsubstantiated expenses, etc. In fact, the Ld. Special Counsel submitted, the Ld. CIT(A) had given a wrong finding that the relevant documents were produced before the A.O., when the AO categorically recorded the various instances of non-compliance. Such a baseless finding, without any backing or evidence deserved to be rejected, the Ld. Special Counsel submitted. He also submitted that the books were also not produced before the

CIT(A). Moreover, the Ld. Special Counsel submitted that the mere production of sample books of accounts, and that too for some zones, by the Assessee, could not be considered to form any basis for conducting effective enquiry by the A.O. It was contended by Ld. Special Counsel that such a finding of the CIT(A) cannot form the basis for relief to the assessee, when there were categorical findings of non-cooperation by the Assessee, made in the assessment order. In this context, the Ld. Special Counsel submitted that the order of the CIT(A) be set aside for want of proper reasons, being erroneous and suffering from non-application of mind. On the other hand, the Ld. AR for the assessee submitted that the books of accounts were produced before the Assessing Officer on sample basis, and that the process of accounting followed by the assessee was understood in detail by the Assessing Officer. He contended that making *ad hoc* addition on the ground that books of account were not produced was not tenable.

(C.3) The third issue in dispute, regarding disallowance of prior period adjustments amounting to Rs.48,76,412/- arises in Assessment Year 2010-11 (in ITA No.6060/Del/2013). The

disallowance was made by the AO on the ground that this amount did not pertain to Assessment Year 2010-11. The Ld. CIT(A) deleted this addition on the ground that the prior period expenses had crystallized, in the current year (relevant to Assessment Year 2010-11). Revenue is in appeal before us against the relief given by the Ld. CIT(A) to the assessee on this issue in Assessment Year 2010-11. In the course of appellate proceedings in Income Tax Appellate Tribunal, the Ld. Special counsel for Revenue submitted that no such argument was made by the Assessee before the A.O., and was only raised for the first time before the Ld. CIT(A). He further submitted that no evidence was led by the Assessee before the A.O. to show that prior period expenses were crystallized in the year relevant to Assessment Year 2010-11. It was submitted by the Ld. Special Counsel, that since the AO was not given any opportunity to examine this claim of the Assessee, and in view of the fact that no evidence or reasoning is adduced by the CIT(A) in his order, the Assessee should not be allowed to claim such expenses without the AO having the opportunity to examine the veracity of the same. The Ld. AR for the assessee relied on the order of the Ld. CIT(A).

(D) At the time of hearing before us, we patiently heard the submissions of the Ld. Special Counsel for Revenue as well as the Ld. Authorized Representative of the assessee. In response to specific query from the Bench, the Ld. Authorized Representative for the assessee submitted that the assessee faced genuine difficulty in fully complying with enormous compliances required by the Assessing Officer during assessment proceedings. The Ld. AR for the assessee further submitted that the assessee was willing to provide all relevant informations and also to produce all books of accounts and supporting documents in respect of all the issues in dispute in the present eight appeals before us. Moreover, at the time of hearing, the representatives of both sides, the Ld. Special Counsel for Revenue as well as the Ld. Authorized Representative of the assessee were in agreement that all the issues in dispute in these appeals should be set aside to the file of the Assessing Officer for fresh order in accordance with law after providing reasonable opportunity to the assessee. Before us, the representatives of both sides also submitted that every course of action as per law should be left upon for both sides during fresh assessment proceedings.

(D.1) It is not in dispute, that the Assessee failed to furnish full information to the AO, during assessment proceedings, in respect of application or use of income or property for use of specified persons referred to in section 13(3) of IT Act. It is also not in dispute that relevant details of the specified persons, such as PAN and their interest in concerns/activities were not provided by the assessee to the AO. Further, it is not in dispute that the assessee had failed to make full compliance with the requirements made by the AO, to produce the books of accounts, relevant supporting documents and other information/documents as prescribed by the AO during assessment proceedings; though the assessee did, without dispute on this fact, produce books of accounts before the AO on sample basis. Moreover, there is no dispute, that the assessee did not claim during assessment proceedings that prior period expenses crystallized during the current period relevant to Assessment Year 2010-11; and, that the AO did not get any opportunity to examine the assessee's claim. Further, the Ld. CIT(A) did not provide any opportunity to the AO, to rebut this claim made by the assessee for the first time during appellate proceedings before Ld. CIT(A). We

also notice that the Ld. CIT(A) has not passed a speaking order on how he came to the conclusion, that the aforesaid prior period expenses amounting to Rs.48,76,412/- had crystallized during the year relevant to Assessment Year 2010-11.

(D.1.1) We take notice of view expressed by Co-ordinate Bench of ITAT, Delhi in the case of Aradhana Foods & Juices Pvt. Ltd. vs. ITO (2017) 50 CCH 0080 (Delhi-Trib.) vide order dated 05.06.2017 in ITA No.2427/Del/2011; that when the assessee did not fully honour lawful authority of Revenue, and when lawful requirements prescribed by Revenue Authorities were not fully complied with; then the assessee could not claim lenient view as a matter of right; and the assessee must face its consequences as per law. We are in agreement with this view.

(D.1.2) However, we are also cognizant that the assessee faced genuine difficulties in fully complying with all the requirements prescribed by the AO during assessment proceedings.

(D.2) Regarding the claim of the assessee (in Assessment Year 2010-11) that prior period expenses crystallized during the period relevant to Assessment Year 2010-11; we find that this claim was not scrutinized properly either during assessment proceedings (because this claim was not made by the assessee during assessment proceedings) before the AO, or during appellate proceedings before the Ld. CIT(A).

(D.2.1) In view of the foregoing, and as representatives of both sides were in agreement on this at the time of hearing before us, we set aside the impugned appellate orders of the Ld. CIT(A), and restore all issues in dispute in the present appeals before us, to the file of the Assessing Officer, for fresh order in accordance with law, after providing reasonable opportunity to the assessee. As submitted by representatives of both sides, every legal course of action will be available to both sides, in accordance with law, in the course of fresh assessment proceedings before the Assessing Officer. All the eight appeals are disposed off in accordance with the aforesaid directions.

(E) For statistical purposes, all the eight appeals are partly allowed.

This order was already pronounced orally on 03.03.2022 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. This written order is now signed today on 10.03.2022.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Dated: 10.03.2022

Pk

Copy forwarded to:

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

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI