

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : B : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2106/Del/2019
Assessment Year: 2013-14

Calzint Fashions Ltd., D-9/3, Okhla Industrial Area Phase II, New Delhi.	Vs	ITO, Ward 5(3), New Delhi.
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PAN: AADCC0924F

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Rajesh Kr. Dhanesta, Sr. DR
Date of Hearing	:	21.04.2022
Date of Pronouncement	:	21.04.2022

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 19th March, 2018 of the CIT(A)-2, New Delhi, relating to assessment year 2013-14.

2. None appeared on behalf of the assessee at the time of hearing. No application seeking adjournment of the case has been filed. It was seen that the notice issued by the Registry through RPAD were returned on all occasions with the postal remarks 'left.' Under these circumstances, we deem it proper to

decide the issue on the basis of the material available on record and after hearing the ld. DR

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing and trading of stocks, hankies, caps, fabrics, yarn, etc. It filed its return of income on 30th September, 2013 declaring the total income at Rs.28,72,740/-. The case was selected for scrutiny through CASS for the reason 'large other expenses claimed in the P and L A/c.' The AO issued statutory notices u/s 143(2) and 142 (1) which were duly served on the assessee. During the course of assessment proceedings, the assessee filed various details as called for from time to time. After considering the details furnished by the assessee, the AO completed the assessment u/s 143(3) on 29th March, 2016 determining the total income of the assessee at Rs.87,37,884/- by making the following additions:-

i)	ROC fees capitalized u/s 37	Rs. 32,500/-
ii)	Delayed payment of DVAT & CST	Rs. 3,13,631/-
iii)	Non deduction of TDS on interest to NBFC u/s 40a(ia)	Rs. 9,89,141/-
iv)	Late payment of TDS u/s 40a(ia) (As discussed above)	<u>Rs.45,29,872/-</u>
	TOTAL	<u>Rs.58,65,144/-</u>

4. In appeal, the ld.CIT(A) upheld the action of the AO.

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

“1. That on the facts and circumstances of the case and in law, the order passed by CIT (A)-02, New Delhi is contrary to the facts and bad in law.

2. That on the facts and circumstances of the case and in law, the Ld. CIT (A)- 02 was not justified in upholding the decision of the AO by confirming the addition of Rs.58,32,644/- u/s 40 (a) (ia) on account of (a) delayed payment of DVAT & CST, (b) non deduction of TDS on interest to NBFC without taking into consideration the certificates from the chartered accountants, which were furnished during the appellate proceedings, and (c) Late payment of TDS,

2.1 That on the facts and circumstances of the case and in law the LD. CIT(A)- 02 was not justified in confirming the addition by rejecting the application for admission of additional evidence.

3. That the appellant craves leave to add, alter ,and modify any of the grounds at the time of hearing or before the hearing.”

6. We have heard the ld. DR and perused the record. We find, the assessee in the grounds of appeal before the CIT(A) has raised the following grounds:-

13	Grounds of Appeal (each ground not exceeding 100 words)		
	Relevant section (s) of IT Act	Issue	Ground of Appeal
	43 B	Sales Tax Disallowed Rs. 3,13,631/- for delayed payment.	Same has not been claimed as Deduction in next year on payment basis u/s 43B and disallowance shall cause double taxation.
	40(a)(ia)	Interest payment to NBFCs disallowed Rs. 9,89,141/- for Non Deduction of TDS.	All parties have included Interest in their Income and paid tax on same. Disallowance of same to assessee company shall result in double taxation being same amount included in income of 2 different assessee.
	40(a)(ia)	Payment for	Deductees have inducted same

		Expenditure incurred disallowed due to Late deposit of TDS.	in their income and paid tax thereon. Appellant has not claimed the expense in subsequent years on payment basis. Disallowance shall lead to double taxation.
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7. We find, before the CIT(A) the assessee has also filed an application for admission of additional evidence under Rule 46A of the Act. Although the assessee had taken three grounds before the CIT(A), however, the Id.CIT(A) while dismissing the appeal has given the following reasons:-

“8. Decision

8.1 From the facts discussed in the assessment order and the submissions made on behalf of the appellant before me, I find that the grievance of the appellant is regarding the disallowance of Rs.9,81,941/- made u/s 40(a)(ia) of the Act for non deduction of tax at source on the payments of finance charges to various NBFC companies. During assessment proceedings the appellant was required to explain with the evidence the payment of interest without deduction, of tax at source. The appellant filed no reply and rather agreed for disallowance u/s 40(a)(ia) of the Act.

8.2 Before me, the appellant has filed the certificates in Form 26A of the Act to claim that the income in the hands of the payees have already been considered in the relevant assessment year in the return of income. The appellant has filed application for admission of these certificates as additional evidences and the explanation given in the application was that the certificates have been received after passing of the assessment order and, therefore, the appellant was no able to furnish these evidences before the AO during assessment proceedings. I find that the addition in question was an agreed addition and the appellant did not dispute this fact before me in the written submission. I, therefore, hold that the appellant cannot re-agitate this issue in the appeal proceedings. Hence, this ground is dismissed.”

8. In our opinion, the matter requires re-adjudication at the level of the CIT(A) since he has not decided all the grounds and has not admitted the additional evidences which go to the root of the matter. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the CIT(A) with a direction to decide all the grounds raised before him and decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court at the time of hearing itself, i.e., on
21.04.2022.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 21st April, 2022.

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi