

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

**BEFORE,
SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.5805/Del/2018
(ASSESSMENT YEAR 2006-07)**

**ITA No.5806/Del/2018
(ASSESSMENT YEAR 2007-08)**

**ITA No.5807/Del/2018
(ASSESSMENT YEAR 2008-09)**

**ITA No.5808/Del/2018
(ASSESSMENT YEAR 2009-10)**

M/s Vitt Evam Lekha Adhikari, Basic Shiksha, Chakrota Road, Saharanpur. PAN-MRTV0 0574A (Appellant)	Vs.	Income Tax Officer (TDS), Muzaffarnagar. (Respondent)
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Appellant By	None
Respondent by	Sh. Toufel Tahir, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) All these four appeals by Assessee have been filed against the consolidated orders dated 28.06.2018 of Learned

Commissioner of Income Tax (Appeals), Muzaffarnagar [Ld. CIT(A)”,
for short], for Assessment Years 2006-07 to 2009-10. Grounds
taken in these appeals of Assessee are as under:

ITA No.5805/Del/2018 for Asst. Year 2006-07

“1. That the order U/s 201(1)/201(1 A) passed by the AO is illegal, bad in law and without jurisdiction. The CIT (A) erred in dismissing the appeal of the appellant as not maintainable, which is illegal, bad in law and against the provision of the Act.

*2. That, the assessing officer has erred on facts and in law, while giving the appeal effect and treating the assessee appellant as assessee in default and creating a liability TDS at **Rs.9,766.00** and Interest at **Rs.6,299.00** U/s 201 (1A) of the Act, in complete defiance of the order passed by the CIT (A). The CIT (A) erred in upholding the same.*

3. That, the additions made and the observations made are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record.

4. That, the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/allowances made.

5. That, the impugned assessment order passed by the assessing officer and order passed by CIT (A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.

6. That, the appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.

All of the above grounds of appeal arc without prejudice and arc mutually exclusive to each other.”

ITA No.5806/Del/2018 for Asst. Year 2007-08

“1. That the order U/s 201(1)/201(1 A) passed by the AO is illegal, bad in law and without jurisdiction. The CIT (A) erred in dismissing the appeal of the appellant as not maintainable, which is illegal, bad in law and against the provision of the Act.

2. That, the assessing officer has erred on facts and in law, while giving the appeal effect and treating the assessee appellant as assessee in default and creating a liability TDS at **Rs.52,752.00** and Interest at **Rs.27,694.00** U/s 201 (1 A) of the Act, in complete defiance of the order passed by the CIT (A). The CIT (A) erred in upholding the same.

3. That, the additions made and the observations made are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record.

4. That, the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/allowances made.

5. That, the impugned assessment order passed by the assessing officer and order passed by CIT (A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.

6. That, the appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.

All of the above grounds of appeal are without prejudice and are mutually exclusive to each other.”

ITA No.5807/Del/2018 for Asst. Year 2008-09

“1. That the order U/s 201 (1)/201(1 A) passed by the AO is illegal, bad in law and without jurisdiction. The CIT (A) erred in dismissing the appeal of the appellant as not maintainable, which is illegal, bad in law and against the provision of the Act.

2. That, the assessing officer has erred on facts and in law, while giving the appeal effect and treating the assessee appellant as assessee in default and creating a liability IDS at **Rs.68,251.00** and Interest at **Rs.27,641.00** U/s 201 (1 A) of the Act, in complete defiance of the order passed by the CIT (A). The CIT (A) erred in upholding the same.

3. That, the additions made and the observations made are unjust, unlawful and based on mere surmises and conjectures. The additions made cannot be justified by any material on record.

4. That, the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/allowances made.

5. That, the impugned assessment order passed by the assessing officer and order passed by CIT (A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.

6. That, the appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.

All of the above grounds of appeal are without prejudice and are mutually exclusive to each other.”

ITA No.5808/Del/2018 for Asst. Year 2009-10

“1. That the order U/s 201(1)/201(1A) passed by the AO is illegal, bad in law and without jurisdiction. The CIT (A) erred in dismissing the appeal of the appellant as not maintainable, which is illegal, bad in law and against the provision of the Act.

2. That, the assessing officer has erred on facts and in law, while giving the appeal effect and treating the assessee appellant as assessee in default and creating a liability TDS at **Rs.1,13,793.00** and Interest at **Rs.32,431.00** U/s 201 (1 A) of the Act, in complete defiance of the order passed by the CIT (A). The CIT (A) erred in upholding the same.

3. *That, the additions made and the observations made are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record.*

4. *That, the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/allowances made.*

5. *That, the impugned assessment order passed by the assessing officer and order passed by CIT (A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.*

6. *That, the appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.*

All of the above grounds of appeal are without prejudice and are mutually exclusive to each other.”

(B) The grounds of appeal in these four appeals are similarly worded and serialized. Further, the issues raised are common. Therefore, for the sake of convenience, all the four appeals are hereby disposed off by this consolidated order.

(C) Perusal of records in these appeals shows that order(s) dated 25.03.2011 were passed u/s 201(1)/201(1A) of IT Act, 1961 by the Assessing Officer (“AO” for short) for Assessment Years 2005-06 to 2009-10. The assessee filed appeal(s) before the Ld. CIT(A). Vide appellate order dated 22.12.2011, Ld. CIT(A) partly allowed the assessee’s appeals. Consequential order was passed (consolidated

dated 19.03.2014) by the AO for the aforesaid years (Assessment Year 2005-06 to 2009-10). The assessee's appeal(s) against the consolidated order dated 19.03.2014 were dismissed by Ld. CIT(A) vide impugned consolidated order dated 28.06.2018 by Ld. CIT(A). In the mean time, ITAT passed consolidated order dated 31.01.2008 whereby aforesaid consolidated order dated 03.11.2015 was set aside, directing the Ld. CIT(A) to pass fresh order(s).

(C.1) The present four appeals before us have been filed by the assessee, against the aforesaid impugned consolidated order dated 28.06.2018 of Ld. CIT(A). In the present appeals before us, in ground No.2, the assessee has contended that the aforesaid order dated 19.03.2014 passed by the Assessing Officer was in complete defiance of the (aforesaid order dated 22.12.2011) of the Ld. CIT(A). In ground No.5 of the appeals before us, the assessee has also contended that the orders passed by the Assessing Officer and the Ld. CIT(A) are against the principles of natural justice and that the orders have been passed without affording reasonable and adequate opportunity of being heard.

(C.2) On perusal of our records, we find that aforesaid orders dated 25.03.2011 passed by the AO); order dated 03.11.2015 passed by Ld. CIT(A) and order dated 31.01.2018 passed by ITAT are not available on records.

(D) At the time of hearing before us, there was no representation from the side of the appellant assessee. In the absence of any representation from the assessee's side, we heard the Ld. Sr. Departmental Representative ("Ld. DR" for short) for Revenue. In respect of Grounds No.2 & 5 of the appeals before us, the Ld. Sr. DR submitted that the impugned consolidated order dated 28.06.2018 of the Ld. CIT(A) may be set aside and the issue in dispute in grounds No.2 of these appeals may be restored to the file of the Assessing Officer, for fresh order(s) in accordance with law, with the direction to give due consideration to order dated 22.12.2011 of Ld. CIT(A).

(D.1) In view of the foregoing, in the specific facts and circumstances of the case, and as the Ld. Sr. DR for Revenue has made submissions similar to this effect at the time of hearing before

us, we set aside the impugned consolidated appellate order dated 28.06.2018 of the Ld. CIT(A) and we restore the issues in ground No.2 of these appeals to the file of the Assessing Officer with the direction to pass fresh order(s) in accordance with law. We also direct the Assessing Officer to give due consideration to earlier orders passed by Ld. CIT(A) and ITAT. The Assessing Officer is further directed to provide reasonable opportunity to the assessee before passing fresh order(s).

(D.2) All the grounds of appeal in these four appeals before us, are treated as disposed of in accordance with the aforesaid directions; and separate adjudication of each ground of appeal in these four appeals before us is not necessary.

(D.2.1) In the result, all these four appeals by the assessee are partly allowed for statistical purposes.

Our order was already pronounced orally on 26.05.2022 in Open Court, in the presence of Sr. DR for Revenue,

after conclusion of the hearing. This written order is now signed
today on 30/05/2022.

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER
Dated: 30/05/2022
Pk/R.N

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI