

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

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.3373/Del/2017
[Assessment Year : 2008-09]**

Harish Aswal, E-12, Flat No.3006, Royale Garden Estate, Sector-61, Noida-201301. PAN-ADQPA6208F	vs	DCIT, Circle-1, Noida.
APPELLANT		RESPONDENT
Appellant by	Shri Shantanu Jain, Adv. & Shri Gurjeet Singh, CA	
Respondent by	Shri Yogers Nayyar, Sr.DR	
Date of Hearing	31.05.2022	
Date of Pronouncement	03.06.2022	

ORDER

PER CHANDRA MOHAN GARG, JM :

This appeal filed by the assessee against the order of Ld. CIT(A)-1, Noida dated 27.03.2017 in Appeal No.111/2016-17/Noida for the assessment year 2008-09.

2. The grounds raised by the assessee are as follows:-
 1. *“That the Ld. Commissioner of Income Tax (Appeals) has erred in law and facts by confirming the addition of Rs.1,14,73,624/- on account of unexplained expenditure under section 69C of the Income Tax Act, 1961.*
 2. *That the assessee prays for the leave to add, amend or vary the above grounds of appeal before or at the time of hearing.”*

BRIEF FACTS OF THE CASE

3. Brief facts of the case are that the assessee filed return, declaring taxable income of Rs.64,996/- on 30.09.2008 which was processed u/s 143(1) of the Income Tax Act, 1961 (“the Act”). Later on, notice u/s 148 of

the Act was issued on 30.03.2015. Subsequently, notice u/s 143(2) of the Act dated 08.03.2016 was issued to the assessee to furnish certain details/information. In response to the same, the assessee attended the assessment proceedings from time to time and furnished the details and replied to the queries raised during the course of assessment proceedings. During the year under consideration, the assessee, Sh. Harish Aswal, Prop. of M/s. Metal Wood Creations, was engaged in the business of manufacturing of Iron goods and declared gross turnover of Rs.1,50,91,281/-, gross profit of Rs.15,98,984/- and net profit of Rs.94,996/-. The books of accounts were audited u/s 44AB of the Act and copy of Audit Report was also furnished. The Assessing Officer ("AO") had shown in the impugned assessment order that in the STR reference No.1000005337, the turnover of the assessee was Rs.3,41,02,583/- while in the return of income, the assessee had shown a turnover of Rs.1,50,91,281/- only. After accounting the cross transactions, the AO held that the assessee had suppressed its turnover by an amount of Rs.1,14,08,628/- and treated the same as unaccounted expenditure under section 69C of the Act and added that to the taxable income of the assessee.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who dismissed the appeal.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

APPLICATION OF ASSESSEE FOR ADMISSION OF ADDITIONAL GROUNDS

6. In this application, the assessee seeks to admit and adjudicate following grounds of appeal:-

- (i) *“Because the action for the assumption of jurisdiction of reassessment proceedings and the misapplication of the jurisdiction sanction being ‘a fit case for issue of notice’ is being challenged on facts and law.*
- (ii) *Because the action for initiation of re-assessment proceedings is unreasonable as without noticing the distinction of the words, reasons to suspect distinguishable from reasons to belief pursuant to reasons recorded. Further, there is non-application of mind much less independent application of mind by AO. Reasons recorded are vague, lacking tangible material/reasonable cause and justification.*
- (iii) *Because the action for initiation of re-assessment proceedings is unreasonable since the approval granted by Pr.CIT was a mechanical approval and hence initiation of proceedings u/s 147 of the Act on this ground is invalid.”*

7. We have heard the contentions of Ld. Authorized representatives of both parties and perused the material available on record. Ld. Counsel for the assessee submitted that in view of judgement of Hon’ble Supreme Court in the case of ***National Thermal Power Co. Ltd. vs Commissioner Of Income Tax 229 ITR 383 (SC) [1998]*** dated 04.12.1996, the legal grounds which come to the root of the matter, may be admitted for adjudication by the Tribunal. Ld. Counsel for the assessee also submitted that the legal grounds of the assessee do not require any other documentary evidence and the same can be adjudicated on the basis of material already available on record. Therefore, legal grounds of the assessee, which are squarely covered by the various decisions of the Hon’ble Supreme Court and Hon’ble High Court may kindly be admitted in the interest of substantial justice for a decision in accordance with law since they do not require any examination and appreciation of any new facts or evidences then that already on record.

8. Replying to the above, Ld. Sr. DR opposed to the admission of the additional grounds. However, he did not controvert that the additional grounds sought to be raised by the assessee before this Tribunal are pure legal in nature and they do not require any further examination and appreciation of any new fact or documentary evidences and the same can be adjudicated on the basis of material already available on record.

9. On careful consideration of the above submissions, we are of the considered view that the legal grounds raised by the assessee are of legal in nature which can be adjudicated on the basis of the material already available on record. Therefore, respectfully following the proposition rendered in the case of ***National Thermal Power Co. Ltd. vs Commissioner Of Income Tax*** (supra), the additional Ground Nos. (i) to (iii) are admitted for consideration.

9. On perusal of the record, we observed that the assessee had not raised legal grounds before the Ld. CIT(A) and there is no findings on record by the First Appellate Authority on this legal issue. Therefore, as agreed by both the parties, legal grounds are restored to the file of the Ld.CIT(A) for consideration and adjudication after allowing due opportunity of hearing to the assessee.

SOLE GROUND OF ASSESSEE ON MERIT

10. The grounds are on merit, Ld. Counsel for the assessee submitted that Ld.CIT(A) has grossly heard in law and infact by confirming the addition of Rs.1,14,73,624/- on account of unexplained expenditure u/s 69C of the Act. Ld. Counsel for the assessee submitted that the assessee has submitted all documentary evidences before the authorities below including ledger account of Centurian Bank Account No.442756061 available at page 108 to 138 of

assessee's Paper Book before the AO as well as before Ld.CIT(A) which clearly shows that the impugned amount is the amount rate positive after withdrawals which does not attract provision of section 69C of the Act. Ld. Counsel for the assessee vehemently pointed out that neither the AO nor Ld. CIT(A) has given any credence to this ledger account/bank statement with Centurian Bank which clearly shows withdrawal and re-deposit of impugned amount therefore, this issue may kindly be considered and adjudicated by this Bench. Alternatively, Ld. Counsel for the assessee submitted that if it is found necessary then this documentary evidence alongwith other relevant and substantial evidence of the assessee may kindly be restored to the file of AO for proper verification and examination.

11. Replying to the above, Ld. Sr. DR strongly opposed the submissions of Ld. Counsel for the assessee. However, in all fairness, Ld. Sr. DR submitted that Department has no serious objection if it is found just and proper to restore the sole ground of assessee to the file of Ld.CIT(A) for proper verification and examination of the documentary evidence as relied by the Ld. Counsel for the assessee and other relevant papers pertaining to the issue of addition u/s 69C of the Act.

12. On careful consideration of the rival submissions, we are of the considered view that neither from the assessment order nor from the order of Ld.CIT(A), it is discernible that the ledger account/bank statement of the assessee with Centurian Bank available at page 108 to 138 of the assessee's Paper Book have been properly appreciated and verified by the authorities below. Since the bone of the contention of the assessee is that the impugned amount is nothing but re-deposit of the amount which was withdrawn by the

assessee from the bank account therefore, no addition is called for u/s 69C of the Act. This issue requires proper examination and verification at the level of authorities below to which Ld. Representatives of both the parties have no objection.

13. On the basis of for-going discussion, we reached to the conclusion that the sole ground of the assessee on merits requires afresh consideration and adjudication at the level of Ld.CIT(A). Since in the earlier part of this order, we have restored legal grounds to the file of Ld. CIT(A) therefore, sole grounds of the assessee on merits is also restored to the file of Ld.CIT(A) for fresh consideration and adjudication. Ld.CIT(A) is directed to decide all legal grounds on merit of the assessee afresh without being prejudice from the earlier first appellate order. Accordingly, sole ground of assessee on merits is allowed for statistical purposes.

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

Order pronounced in the open Court on 03rd June, 2022.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI