

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 6624/Del/2019
(Assessment Year : 2015-16)

Pearl Global Industries Ltd., A-3, community Centre, Naraina Industrial Area, Phase-II New Delhi - 110028 PAN : AAACM 0175 F (APPELLANT)	Vs.	ACIT Circle - 19(2) New Delhi (RESPONDENT)
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Assessee by	Ms. Pallavi Dinodia, C.A.
Revenue by	Shri T. Kipgen, CIT D.R.

Date of hearing:	22.06.2022
Date of Pronouncement:	22.06.2022

ORDER

PER ANIL CHATURVEDI, AM :

The present appeal filed by the assessee is directed against the order dated 10.06.2019 of the Commissioner of Income Tax (Appeals)-38, New Delhi relating to Assessment Year 2015-16.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company. Assessee filed its return of income on 30.11.2015 for A.Y. 2015-16 declaring income of Rs.14,07,66,560/-. Thereafter case was selected for scrutiny through CASS and statutory notice u/s 143(2) of the Act was issued on 09.04.2016 and served upon the assessee. AO thereafter passed order u/s 143(3) of the Act vide order dated 31.12.2017 and determined the total income at Rs.16,18,64,303/- under normal provisions and at book profit of Rs.15,87,84,241/- u/s 115JB of the IT Act 1961.

4. Aggrieved by the order of AO, Assessee carried the matter before CIT(A) who vide order dated 10.06.2019 in Appeal No.CIT(A), Delhi-38/10289/2018-19 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

1. *“That the Ld CIT (A) grossly erred in law on facts of the appellant’s case in passing an Ex Parte order on wholly erroneous grounds*
2. *That the ex parte order passed by the Ld CIT (A) upholding all the additions made by the AO is bad in law & on facts of the appellant’s case.*
3. *That without prejudice, CIT(A) ought to have examined the nature of additions & passed an order on merits of the additions. The action of CIT(A) is bad in law & against the principles of fair play and justice.*
4. *That the order of CIT (A) u/s 250 of the Income Tax Act, 1961 (‘Act’) is bad in law and on facts of the assessee’s case.*
5. *That on the facts and in circumstances of the case the Ld. CIT(A) has grossly erred in upholding the total income of the Rs. 16,18,64,303/- against the returned income of Rs. 14,07,66,560/- under normal provisions of the act by*

confirming the disallowances amounting to Rs. 2,10,97,743/- on wholly illegal, erroneous and untenable grounds.

6. *Consequentially the Ld. CIT (A) also grossly erred in upholding the book profits of the Rs. 15,87,84,241/- against the returned book profit of Rs. 12,86,93,886/- under MAT provisions of the act by confirming the disallowances amounting to Rs. 3,00,90,355/- on wholly illegal, erroneous and untenable grounds.*
7. *That the Ld. CIT(A)/Assessing Officer has erred in facts and law in disallowing the payment of Rs. 93,33,270/- towards employees contribution to welfare fund of EPF under section 36(1)(va) of the Act by –*
 - a. *Alleging that the assessee failed in deposit of employees contribution of EPF in their EPF Authorities on or before the due date as per the provisions of section 36(1)(va) read with section 2(24)(x) of the Act.*
 - b. *Not appreciating that the payment was made before the due date of filing of return of income as per the proviso (b) to the section 43 B read with section 36(1)(va) of the Act.*
 - c. *And without giving the reasonable opportunity to the assessee which is against the principle of natural justice and fair play.*
 - d. *By not following the Jurisdictional HC judgment in the case of CIT Vs AIMIL Ltd 2010 321 ITR 508.*
8. *That the Ld. CIT(A) has grossly erred in law in confirming the disallowances made by the AO of Rs. 70,55,684/- under section 14A read with rule 8D of the Income Tax Rules by –*
 - a. *Not appreciating that the assessee has ‘suo-motu’ made disallowance of Rs. 9,77,924/- under section 14A read with rule 8D of the Income Tax Rules inspite of the fact that the assessee has not claimed any exempt income during the year*
 - b. *Failed to appraise the judgment of Honorable Delhi High Court in case of Cheminvest Limited [2015] 281 CTR 447 (Delhi) that no disallowance u/s 14A can be made in a year in which no exempt income has been earned or received by the assessee.*

c. Applying Rule 8D in a mechanical way

9. *That the Ld. CIT(A)/Assessing Officer has erred in facts and law in disallowing the excess depreciation of Rs. 43,60,260/- by -*
 - a. *Alleging that the depreciation has been calculated from the FY 2008-09 despite of the fact that it should have been calculated from the FY 2010-11 as the occupation certificate in respect of such building (i.e. 5 floors) would become effective from 17.12.2010.*
 10. *That the Ld. CIT(A) has grossly erred in law in confirming the disallowances made by the AO on account of Disallowance of amount withdrawn from the reserve or provisions of Rs. 2,40,12,595/- under the MAT provisions of the Act on wholly illegal, erroneous and untenable grounds.*
 11. *That the Ld. CIT(A) has grossly erred in law in confirming the disallowance made by the AO on account of Disallowance u/s 14A of Rs. 70,55,684/- under the MAT provisions of the Act without appraising the Judgment given by Special Bench in case of Vireet Investments Pvt Ltd [2017] 82 taxmann.com 415 (Delhi - Trib.) (SB)*
 12. *That the interest under section 234B and section 234C of the Act is not chargeable.*
 13. *The aforesaid grounds of appeal are without prejudice to one another.*
 14. *The appellant craves leave to add, amend, alter, change vary or substitute any of the aforesaid grounds or raise an additional ground if it becomes necessary to do so in the interest of justice.”*
5. Before us, at the outset, Learned AR submitted that though assessee has raised various grounds but she will argue on ground no.2, wherein the grievance of the assessee is that CIT(A) has

dismissed the appeal of the assessee without deciding the issue on merits.

6. Before us, Learned AR submitted that CIT(A) in the Chart at Page 6 of his order has mentioned that none appeared before him on 25.04.2019. She submitted that the aforesaid observation of CIT(A) is factually wrong as the Counsel for the assessee had appeared and had made the submissions. She pointed to the copy of the submissions made before CIT(A) at page 146 of the paper book. Before us, the assessee therefore submitted that one more opportunity be granted to assessee to plead its case and further she undertakes to appear before the authorities and furnish all the required details to support its contentions.

7. Learned DR on the other hand objected to the request made by AR seeking second innings. He supported the order of lower authorities.

8. We have heard the rival submissions and perused the material available on record. Before us, Learned AR has pointed to the written submissions dated 25.04.2019 filed before CIT(A) (placed at page 146 of the paper book) but the same has not been considered by CIT(A). The perusal of CIT(A) order further reveals that CIT(A) has passed an *ex parte* order without deciding the issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state the points in dispute and thereafter assign the

reasons in support of his conclusion. We are of the view that by dismissing the appeal without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be condemned unheard. In view of these facts, we set aside the impugned order of CIT(A) dated 10.06.2019 and restore the issue to the file of CIT(A) for re-adjudication of the issues after granting sufficient opportunity of hearing to both the parties. Assessee is also directed to furnish the details called for by the authorities. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the other grounds raised by the assessee. **Thus the ground of assessee is allowed for statistical purposes.**

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

Order pronounced in the open court on 22.06.2022

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 22.06.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI