

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.3948/Del./2018
(ASSESSMENT YEAR : 2013-14)**

Shilu Kumar,
564, Udyog Vihar, Phase V,
Gurgaon – 122 016 (Haryana).

vs. Pr.CIT – 11,
New Delhi.

(PAN : AAAPK9054E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Ms. Yagya Saini Kakkar, CIT DR

Date of Hearing : 06.07.2022

Date of Order : 06.07.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the ld. Pr. CIT -11, New Delhi, dated 23.03.2018 for the assessment year 2013-14.

2. The grounds of appeal taken by the assessee read as under :-

“1. That the Revenue has erred in law and on the facts in invoking the provisions of section 263 of the Income Tax Act, 1961 and stating that the assessment order is erroneous in so far as it is prejudicial to the interests of the revenue.

2. That the Revenue has erred in law and on the facts in failing to quantify the addition that has to be made during the course of proceedings under section 263 of the Income Tax Act, 1961.

3. That the Revenue has erred in law and on the facts in failing to give any negative inference during the course of proceedings under section 263 of the Income Tax Act, 1961.”

3. In this case, the Assessing Officer (AO) passed a very short order under section 143(3) of the Income-tax Act, 1961 (for short ‘the Act’) as under :-

“1. Return declaring loss of Rs.3,94,78,580/- was e-filed on 30.09.2013 vide Ack.No.80905211300913. The case was selected for scrutiny under CASS as per guidelines/procedure; for selection of cases for scrutiny, Notice u/s 143(2) was issued on 03.09.2014 and was duly served upon the assessee. Subsequently, notice u/s 142(1) was also issued and duly served upon the assessee. In response to the notices issued, Ms. Arun Magon, C.A/ A.R of the assessee attended the proceedings time to time and submitted the necessary details and documents and the case was discussed with him.

2. During the year under consideration, the assessee has derived income from Business and income from other sources. The assessee is an association of person. The books of accounts and supporting vouchers and invoices have been checked on test check basis.

3. After discussion, the income returned by assessee is accepted and assessed accordingly. Necessary forms are being issued.”

4. Against the above order, Id. CIT (A) exercised jurisdiction u/s 263 of the Act and passed following order :-

“1. The assessment records of Mrs. Shilu Kumar for the A.Y. 2013-14 were called for and examined. The AO framed assessment vide order dated 01.03.2016 u/s. 143(3) by making no addition. The case was selected for scrutiny to verify large other expenses claimed in the P&L Account, among others issues.

2. Through reply dated 18.01.2016, the assessee had furnished the breakup of ‘other expenses’. The AO has not made any inquiry/verification in regard to the genuineness of the expenses. In fact no further details, i.e. name and address of persons; PAN; whether TDS has been deducted, were called for in respect of job work charges (Rs.4,45,85,470/-), establishment expenses (Rs.4,44,16,802/-), exhibition expenses (Rs.1,24,65,622/-). The total claim of expenses under the other expenses is Rs.15.16 crores, It is

seen that substantial expenses have been debited also on account of Discount on sale, foreign exchange fluctuation, and direct expenses.

3. On perusal of the assessment record, it is seen that apart from a list of break up, no other details of the expenses were filed or examined. The assessment order, therefore, prima facie was erroneous and prejudicial to the interests of the revenue.

4. Shri Arun Magon, CA attended the proceedings from time to time. Through reply dated 30.01.2017, it was stated "In this regard we wish to state that the assessee has furnished the breakup of other expense, claimed in the Return of Income and explained to the assessing officer that Establishment expenses, job work charge and Direct Expenses inadvertently merged with 'Other Expenses' while filing the return of income. Therefore, Other Expenses seems to be large though all these expenses were also claimed in the earlier years as well. The assessing officer verified it with the earlier year return of income of the assessee and found the claim of the assessee as genuine and accepted the explanation of the assessee. Further, the assessing officer had also verified ledgers and vouchers of aforesaid expenses and tax deducted thereon while verifying books of accounts and vouchers on February 29, 2016. The tax deducted at source for each of the aforesaid expense had clearly been recorded in the ledgers and the assessing officer had verified those ledgers. Therefore to conclude that the assessing officer has not made any inquiry/verification in regard to the genuineness of the expenses is factually incorrect".

5. During the course of 263 proceedings the assessee has filed details of establishment expenses, exhibition expenses, details of job workers, copy of the agreement with M/s. S.K. Enterprises, manpower supplier, also a copy of account of M/s. S.K. Enterprises in assessee's books. Copy of bank statement of M/s. S.K. Enterprises was also requisitioned u/s. 133(6) of the Income Tax Act by my predecessor.

6. It is seen that none of these details were called for or examined by the AO, and have been filed for the first time in the 263 proceedings. There is an order sheet entry dated 29.02.2016 in the assessment folder which stated "Mr. Arun Magon CNAR attended and the books of accounts and vouchers/debts have been checked on test check basis. The case is discussed with him'. However, no finding of comparison with earlier assessment years, or specific finding regarding large expenses claimed have been made by the AO.

7. I have considered the submission made in 263 proceedings; the assessment order and the assessment records, it is clear that although the large expenses claimed in the return of income were to be enquired into and verified by the AO, the same was not done and no details of these expenses are on the assessment record. The details tiled by the assessee in the 263 proceedings were never filed before the AO. The assessment order was passed by the AO without necessary enquiries and the AO did not take notice of all relevant facts and failed to examine the correctness or

otherwise of the claim of expenses under the Income tax Act. The case is duly covered under clause (a) of Explanation-2 to sub-section 1 of Section 263 of Income Tax Act.

8. Thus, I hold that the assessment order under consideration is erroneous in so far as it is prejudicial to the interests of the revenue to the extent stated in the proceedings paras. The AO is directed to examine the issue afresh, provide opportunity to the assessee, and pass a speaking order.”

5. Against the above order, assessee has filed appeal before us. Despite notice none appeared on behalf of the assessee on all previous four occasions. Today, on the 5th occasion also, nobody has appeared on behalf of the assessee. Hence we proceed to dispose of the appeal by hearing the ld. DR of the Revenue and perusing the records. We find that the ground raised by the assessee challenging the section 263 order based upon the reasoning that ld. Pr.CIT should have quantified the addition to be made and that ld. Pr.CIT has not given any negative inference during the course of proceedings before him. We find that there is no provision in the Act under section 263 which provides that the ld. Pr.CIT needs to quantify the addition. Further the plea that during proceedings before him ld. Pr.CIT did not give any negative inference to the assessee is also not tenable. However, we note that there is an apparent lacuna in the order of the ld. Pr.CIT. Inasmuch as in the order of ld. Pr.CIT while concluding he has relied upon explanation 2(a) to the section 263 of the Act. We note that this amendment was brought into the statute books with effect from 01.06.2015. The assessment year in this case is 2013-14. It has already

been held by higher courts that the amendment is not retrospective. Hence it is not clear whether the other findings and observations of the Id. Pr.CIT are based upon this amendment only or they are independent of the same. In this view of the matter, this is a mistake on the part of Id. Pr.CIT. Further as noted above, the ground raised by the assessee is also not very clear as to the grievance of the assessee. In view of this mistake by the Id. Pr. CIT, we deem it appropriate to remit the issue to the file of Id. Pr. CIT to consider the issue afresh.

6. In the result, the appeal by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on this 6th day of July, 2022 after the conclusion of the hearing.

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

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 6th day of July, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.Pr.CIT (A)-11, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**