

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.7690/Del/2017
Assessment Year: 2012-13

ITA No.4597/Del/2017
Assessment Year 2012-13

Buildtech Constructions,
O-11, 9A, 2nd Floor,
Palam Vyapar Kendra,
Palam vihar,
Gurgaon.

Vs. DCIT,
Circle-1(1),
Gurgaon.

PAN: AAIFB6995K

ITA No.4824/Del/2017
Assessment Year 2012-13

DCIT,
Circle-1(1),
Gurgaon

Vs. Buildtech Constructions,
O-11, 9A, 2nd Floor,
Palam Vyapar Kendra,
Palam vihar,
Gurgaon.

PAN: AAIFB6995K

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Kanav Bali, Sr. DR
Date of Hearing	:	03.08.2022
Date of Pronouncement	:	24.08.2022

ORDERPER C.M. GARG, JM:

ITA No.7690/Del/2017 filed by the assessee is directed against the order dated 26.09.2017 of the CIT(A)-1, Gurgaon, relating to Assessment Year 2012-13. ITA Nos.4597/Del/2017 and ITA No.4824/Del/2017 are cross appeals filed by the assessee and the Revenue, respectively, against the order of the CIT(A)-1, Gurgaon, u/s 250(6) of the IT Act, dated 02.05.2017, for assessment year 2012-13

2. The grounds of appeal read as under:-

ITA No.7690/Del/2017

“1. That on the facts and in the circumstances of the case, the CIT (A) erred on facts and in law in confirming the penalty imposed on the disallowance of Rs. 68,33,700 made by the Assessing Officer which is based on estimated net profit alleging the appellant furnished inaccurate particulars.

2. That on the facts and in the circumstances of the case, the Assessing Officer erred on facts and in law in not providing adequate opportunity to the appellant to produce necessary confirmations from the creditors.

3. That on the facts and in the circumstances of the case, the CIT (A) erred on facts and in law in not appreciating that the appellant had produced the books of accounts and documents in support of expenditures for the examination of the Assessing Officer during the remand proceeding and they were accepted and taken on record by the Assessing Officer.

4. That on the facts and in the circumstances of the case, the CIT (A) erred on facts and in law in not considering the merits of the rejoinder submitted before the CIT(A) on the remand report of AO with regard to genuineness of creditors and confirmation provided by a few creditors.

The appellant craves leave to add to, alter, amend or vary from the aforesaid grounds of appeal at or before the time of hearing.

ITA No.4597/Del/2017

“1. That on the facts and in the circumstances of the case, the CIT (A) erred on facts and in law in confirming the disallowance of Rs. 68,33,700 made by the Assessing Officer based on estimated net profit.

2. That on the facts and in the circumstances of the case, the Assessing Officer erred on facts and in law in not providing adequate opportunity to the appellant to produce necessary confirmations from the creditors.

3. That on the facts and in the circumstances of the case, the CIT (A) erred on facts and in law in not appreciating that the appellant had produced the books of accounts and documents in support of expenditures for the examination of the Assessing Officer during the remand proceeding and they were accepted and taken on record by the Assessing Officer.

4. That on the facts and in the circumstances of the case, the CIT (A) erred on facts and in law in not considering the merits of the rejoinder submitted before the CIT(A) on the remand report of AO with regard to genuineness of creditors and confirmation provided by a few creditors.

5. That on the facts and in the circumstances of the case, the CIT (A) erred on facts and in law in not providing specific direction for the adjustment of Rs. 5,48,948/- in the subsequent years consequent to the withdrawal of credit for TDS in the relevant previous year, i.e., Financial Year 2011-12.

The appellant craves leave to add to, alter, amend or vary from the aforesaid grounds of appeal at or before the time of hearing.”

ITA No.4824/Del/2017

“(i) Ld. CIT(A) has erred in deleting the addition of Rs. 2,03,03,789/- made on account of difference in receipt as per 26AS and Profit & Loss account.

(ii) That the appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.”

3. When the appeals were taken up for hearing, neither the assessee nor his representative appeared nor any adjournment application has been filed. On perusal of the relevant appeal records and keeping in view the submissions of the ld. Sr. DR, we find it appropriate to adjudicate the appeals in absence of the assessee and, thus, we proceeded to adjudicate the appeals after hearing the submissions of the ld. Sr. DR on behalf of the Department.

4. Regarding assessee's appeal in ITA No.4597/Del/2017 and Revenue's appeal in ITA No.4824/Del/2017, the ld. Sr. DR candidly agreed to the factual situation clearly emerged from the records and orders of the authorities below that the assessee was not provided due opportunity of hearing to produce necessary confirmations from the creditors to challenge the validity of quantum addition. The ld. Sr. DR also submitted that the Department has no serious objection if the matter is restored to the file of the AO for fresh adjudication and for passing a *denovo* assessment order as the assessee was no allowed proper opportunity of hearing before the ld.CIT(A).

5. On careful consideration of the above submissions and on careful perusal of the appeal records of the assessee as well as that of the Revenue, it becomes amply clear that the assessee was not allowed due opportunity of hearing before the authorities below. Therefore, the matter is restored to the file of the AO for *denovo* framing of assessment order after allowing due opportunity of hearing to the assessee. Accordingly, ITA No.4597/Del/2017 of the assessee and ITA No.4824/Del/2017 of the Revenue are allowed for statistical purposes.

ITA No.7690/Del/2017 (Penalty appeal)

6. Since, by the earlier part of this order we have restored the matter to the file of the AO for fresh adjudication and for framing the assessment order *denovo*, therefore, the penalty issue being consequential also deserves to be restored to the file of the AO with a direction that if, after passing a fresh assessment order in pursuance of this order, the AO finds it appropriate to initiate penalty proceedings, then, the AO would be at liberty to initiate penalty proceedings as per the provisions of the Act and as per the rules made thereunder. We hold and direct accordingly. ITA No.7690/Del/2017 of the assessee is also allowed for statistical purposes.

In the result, all the three appeals are allowed for statistical purposes only.

Order pronounced in the open court on 24.08.2022.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 24th August, 2022.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi