

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 9435/Del/2019
(Assessment Year : 2016-17)

ITO Ward – 59(3) New Delhi	Vs.	Sarwan Jain B-92, Swasthya Vihar, New Delhi – 110 092
PAN No. AAFPJ 9540 H		
(APPELLANT)		(RESPONDENT)

And

CO No. 26/Del/2020
(Arising out of ITA No.9435/Del/2019)
(Assessment Year : 2016-17)

Sarwan Jain B-92, Swasthya Vihar, New Delhi – 110092	Vs.	ITO Ward – 59(3) New Delhi
PAN No. AAFPJ 9540 H		
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Manoj Sabharwal, Adv.
Revenue by	Shri Abhishek Kumar, Sr. D.R.

Date of hearing:	04.10.2022
Date of Pronouncement:	14.10.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue along with the Cross Objection by assessee is directed against the order dated

13.09.2019 of the Commissioner of Income Tax (Appeals)-19, New Delhi relating to Assessment Year 2016-17.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is an individual who filed his return of income for A.Y. 2016-17 on 17.10.2016 declaring total income of Rs.10,89,640/-. The assessee thereafter, revised its return of income on 23.11.2016 declaring total income of Rs.15,14,640/-. The case was selected for scrutiny and accordingly, notices u/s 143(2) & 142(1) of the Act were issued by the AO. AO has noted that assessee did not file any reply in response to notices u/s 143(2) & 142(1) of the Act. Accordingly framed assessment u/s 144 of the Act vide order dated 30.12.2018 determining the total income at Rs.2,50,73,136/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 13.09.2019 in Appeal No.10266/2018-19 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

1. *“Disallowance of 25% of Sundry Creditors – 49,80,576/-*
2. *Disallowance of 25% of other expenses – 1,17,79,248/-*

5. The assessee in its CO has raised the following grounds:

1. *That the CIT(A) has erred in not adjudicating on the issue of assumption of jurisdiction u/s 144 of the Act.*

2. *The appellant prays for leave to add, alter, rescind from or withdraw any of the above grounds of appeal at or before the time of hearing of the appeal.”*

6. During the course of assessment proceedings and on perusing the audited Balance Sheet of the assessee as on 31.03.2016, AO noticed that assessee had shown sundry creditors amounting to Rs.1,99,22,306/-. The assessee was asked to establish the genuineness of the sundry creditors. AO noted that assessee did not reply to any of the notices or file the required details called for by the AO. He therefore, held that genuineness of the sundry creditors to be unsubstantiated and un-established and accordingly, disallowed 25% of the creditors u/s 41(1)/37 of the Act and accordingly, made additions of Rs.49,80,576/-.

7. AO on perusing the audited Balance Sheet also noticed that the gross receipts from business were shown at Rs.3,71,43,777/- and assessee had shown purchases amounting to Rs.3,32,18,514/- along with other expenses and depreciation showing the total loss of Rs.62,34,024/-. AO noted that assessee was asked to furnish the details of expenses and justified as to how the expenses were genuine and for the purpose of business. AO noted that assessee did not file any evidence to support the claim of the expenses. He, therefore, held the genuineness of purchases, all expenses and depreciation amounting to Rs.4,71,16,995/- to be un-established and un-substantiated. He thereafter, disallowed 25% of those expenses amounting to Rs.1,17,79,248/- and made its additions.

8. Aggrieved by the order of AO, assessee carried the matter before CIT(A). Before CIT(A), assessee *inter alia* submitted that AO has noted an incorrect finding that no details were filed before the AO but however the facts remained that assessee had filed the details online much before the passing of the order. CIT(A) thereafter, called for remand report from the AO and after considering the remand report furnished by AO and the assessee's reply to the remand report, deleted the additions made by AO. While deleting the disallowances made by AO has given a finding that AO in the remand report has found the sundry creditors to be 'explained' and in such a situation, the ad-hoc disallowance of 25% of creditors balances does not stand judicial scrutiny. With respect to the disallowance of other expenses, CIT(A) has given a finding at para 8 of his order that AO has not been able to establish as to which of the expenses were of personal in nature, the quantum and basis of the personal element. He has further noted that AO has also not established or spelt out the expenses which were not vouched completely more so when the assessee's account was duly audited. He, thereafter, by placing reliance on the decision rendered by Hon'ble Delhi High Court in the case of Friends Clearing Agency (P) Ltd. vs. CIT 332 ITR 269 deleted the ad-hoc disallowance of expenses. Aggrieved by the order of CIT(A), Revenue is now before us.

9. Before us, Learned DR supported the order of AO.

10. Learned AR on the other hand reiterated the submissions made before the AO and CIT(A) and further submitted that the CO filed by the assessee in his support of the order of CIT(A) and if the Revenue's appeal is dismissed, the CO of the assessee would not require any adjudication.

11. We have heard the rival submissions and perusal the material available on record. We find that AO while confirming the assessment had disallowed on ad-hoc basis the 25% of the creditors holding it to be unexplained and 25% of the expenses by holding it to be not genuine and not for business purpose. We find that CIT(A) while deleting the addition has given a finding that as far as sundry creditors are concerned in the remand report the AO has accepted the creditors to be genuine and therefore, in such a situation, the holding of 25% of the creditors to be not genuine was not justified. With respect to the disallowance of other expenses, CIT(A) has given a finding that the accounts of the assessee was audited and while disallowing the expenses AO has not pointed any expense where the expenses were not vouched or were for non business purpose. Before us, Revenue has not pointed to any fallacy in the findings of CIT(A). In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

12. In the result, the appeal of the Revenue is dismissed.

13. Since we have dismissed the appeal of Revenue and in view of the submissions of the Learned AR, the CO of the assessee requires no adjudication therefore, **the same is dismissed.**

14. In the combined result, the appeal of the Revenue and CO of the Assessee both are dismissed.

Order pronounced in the open court on 14.10.2022

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 14.10.2022

PY*

Copy forwarded to:

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

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI