

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

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.5237 & 8912/DEL/2019)
[Assessment Year: 2013-14]**

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| M/s Tikona Infinet Pvt. Limited, Corpora, 3 rd Floor, LBS Marg, Bhandup (West), Mumbai-400078 | Vs | The Joint Commissioner of Income Tax, Range-25, First Floor, C.R. Building, New Delhi-110002 |
| PAN-AAACM6427C | | |
| Assessee | | Revenue |

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|-------------|-----------------------------------|
| Assessee by | Sh. Jay Shankar Jha, Employee |
| Revenue by | Sh. Rajesh Kumar Dhanesta, Sr. DR |

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| Date of Hearing | 03.10.2022 |
| Date of Pronouncement | 27.10.2022 |

ORDER

PER DIVA SINGH, JM,

The present appeals have been filed by the assessee wherein the correctness of the separate orders dated 18.03.2019 of Ld. CIT(A)-09, and order dated 27.09.2019 of Ld. CIT(A)-28, New Delhi, pertaining to 2013-14 assessment year is assailed. By the appeals, the assessee assails both the actions of the CIT(A) in sustaining the quantum addition as well as sustaining the penalty imposed u/s 271(1)(c) of the Act.

2. Taking up the order passed in the quantum appeal, it is seen that **ITA No.5237/Del/2019**, the assessee has raised the following grounds:-

“1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deciding the appeal *ex-parte*.

2. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the disallowance of Rs.9,50,000/- being the provision of audit fees payable, invoking provisions of section 40(a) (ia) of the Income Tax Act, 1961.*

3. *On the acts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the disallowance of expenditure of Rs.10,57,338/- being the amount pertaining to TIL provision.”*

3. At the time of hearing, no one was present on behalf of the assessee. The appeal was passed over and adjournment application was moved seeking time. Considering the record, the appeal was passed over.

4. In the second round, some office employee was present requesting for time. The said request was rejected. It is seen that the impugned order has been passed ex-parte qua the assessee. The office employee submitted that the assessee has never received any notice sent to its Delhi office. It was submitted that possibly the notices never reached as the assessee had shifted his head office to Mumbai. Looking at the record, it is seen that the address available in the Form No.36 bears out this fact. Accordingly, considering the record, in the interests of substantial justice, it is deemed appropriate to set-aside the impugned order in order to afford the assessee an opportunity of being heard. Admittedly as per record, the assessee has remained unrepresented. A perusal of the impugned order shows that the address available to the Ld. CIT(A) for issuance of notices etc. was as under:-

“M/s Tikona Infinet Ltd.
225, 3rd Floor, Phase-3,
Okhla Industrial Estate,
New Delhi-110020”

4.1. However, in Form No.36 in the column of appellant's address, made available to the ITAT, the following address of the assessee is made available.:

“M/s Tikona Infinet Pvt. Limited,
Corpora, 3rd Floor, LBS Marg,
Bhandup (West),
Mumbai-400078”

5. In view thereof and in the interests of justice, the impugned order is set-aside and the issue is restored back to the file of the Ld. CIT(A) with a direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. While so directing, we hold that ideally the assessee should have made efforts to keep the First Appellate Authority informed of the change of address by filing an amended Form No.35. Accordingly, due care and attention be exercised in future. It is further directed that the assessee in its own interests participates in the proceedings fully and fairly and not abuse the trust reposed. Accordingly, ITA No.5237/Del/2019 is allowed for statistical purposes.

6. In ITA No.8912/Del/2019, the assessee has challenged the penalty imposed by the AO u/s 271(1)(c), which was affirmed in appeal by the Ld. CIT(A). However, since, the quantum appeal on which the penalty imposed is itself influx. Accordingly, in the interests of justice, the penalty appeal is also set-aside and the issue is restored back to the file of the Ld. CIT(A) with a direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard.

7. In the result, both appeals of the assessee are allowed for statistical purposes only.

Order pronounced in the open court at the time of hearing itself i.e. on 27th October, 2022.

Sd/-
[DR B.R.R.KUMAR]
ACCOUNTANT MEMBER
Delhi; 27.10.2022.

Shekhar,

Copy forwarded to:

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

Sd/-
[DIVA SINGH]
JUDICIAL MEMBER

Asst. Registrar,
 ITAT, New Delhi

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|--|------------|
| Draft dictated | 03.10.2022 |
| Draft placed before author | 03.10.2022 |
| Approved Draft comes to the Sr.PS/PS | |
| Order signed and pronounced on | |
| File sent to the Bench Clerk | |
| Date of uploading on the website | |
| Date on which file goes to the AR | |
| Date on which file goes to the Head Clerk. | |
| Date of dispatch of Order. | |