

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA.No.1584/Del./2020
Assessment Year 2008-2009

M/s. Katt Special Machines Pvt. Ltd., M- 96B/7, Shastri Nagar, New Delhi – 110 052 PAN AABCK9818L	vs.	The Income Tax Officer, Ward – 14 (2), New Delhi – 110 002.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri Anuj Garg, Sr. D.R.

Date of Hearing :	02.11.2022
Date of Pronouncement :	18.11.2022

ORDER

PER ANIL CHATURVEDI, A.M. :

This appeal filed by the Assessee is directed against the order of the Ld. CIT(A)-5, New Delhi, dated 24.10.2019 in Appeal No.Del./CIT(A)-5/0350/2016-17 relating to the A.Y. 2008-2009.

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

2.1. The assessee is a Company who filed its return of income for the A.Y. 2008-09 declaring income of Rs.31,51,730/-. The assessment was initially framed under section 143(3) of the I.T. Act, 1961 vide order dated 30.11.2010 and the total income of the assessee was determined at Rs.66,93,300/-. Aggrieved by the order of A.O, assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 01.06.2012 in Appeal No.666/2011-12 confirmed the additions made by A.O. and granted partial relief to the assessee. Consequent to the order of the Ld. CIT(A), the A.O. computed the revised income under section 250/143(3) of the I.T. Act, 1961 vide order dated 07.03.2016 determining the total income of assessee at Rs.62,79,840/-.

2.2. Aggrieved by the order of Ld. CIT(A), the assessee carried the matter in appeal before the Tribunal and the Tribunal vide order dated 09.05.2014 in

ITA.No.4848/Del./2012 referred the issue of commission paid for denovo consideration to the A.O. Consequent to the directions passed by the Tribunal, the A.O. has noted that notice under section 143(2) of the I.T. Act, 1961 dated 08.01.2015 was issued and served upon the assessee. The A.O. has noted that the case was adjourned as none appeared on behalf of the assessee on several occasions. The A.O. also noted that assessee was asked to produce the parties to whom the commission was paid along with latest addresses. The A.O. has noted that assessee did not produce any of the parties nor furnished their latest addresses. The A.O. thereafter, on the basis of the material available on record, determined the total income of the assessee at Rs.62,79,840/- in the assessment order passed under section 254/250/143(3) of the I.T. Act, 1961 dated 07.03.2016.

2.3. Aggrieved by the aforesaid order of A.O. the assessee carried the matter in appeal before the Ld. CIT(A) who upheld the order of A.O. by observing as under :

“5.4. It is clear from the above directions of the Hon'ble ITAT that matter has been restored back to the file of AO for proper verification regarding commission paid to the six parties who had filed confirmation.

5.5. In the impugned assessment proceedings, it is observed from the assessment order that the appellant has provided part details on 06.01.2016 and 29.02.2016, though various opportunities were provided. On going through the said details, it is observed that appellant has provided the same details, which was produced earlier and subsequently Hon'ble ITAT restored the matter for verification. No new details or any evidence has been given to justify the commission payments.

5.6. The appellant was categorically asked to produce the six persons, to whom the commission was paid, where confirmation has been given and Hon'ble ITAT directed to verify. The AO has also asked for the latest address of said parties. The appellant failed to

produce those parties and not provided the latest address. Instead, the bank account of appellant was provided which was already given earlier. Therefore, it is clear that the appellant could not provided the desired details to substantiate the payment of commission.

5.7. *It is contended by the appellant, as reproduced earlier that the AO has ignored the confirmation. It is also stated that the payment has been made through cheques for which bank statement has been provided during assessment proceedings and TDS has been made on such commission. Appellant has further mentioned that AO asked them to produce the parties to whom the commission was paid but did not made any enquiry by invoking provisions of section 131 of the Act.*

5.8. *In this regard, it is observed that the confirmation from the said six parties were already submitted by appellant in the earlier proceedings and in fact based on the same the Hon'ble ITAT has directed*

AO to verify the same. Other details were also the part of records, which was submitted earlier. Therefore, it was required from appellant to submit further evidence, in the form of contract etc. as mentioned by AO to justify this commission payment. It is also seen that though copy of return has been provided in various cases for the year under consideration, however, it is not clear whether the said parties have shown it as income because no details verifiable from the acknowledgment of the return. Therefore, the payment of commission is not verifiable from the details provided by the appellant.

5.9. *With respect to the contention of appellant that AO has not made any enquiry by issuance of notice u/s 131 of the Act, it is to be mentioned that the appellant was specifically asked to provide their address and produce the six parties. However, appellant failed to provide their new address nor even stated that the addresses mentioned earlier still holds good even after a laps of almost nine years. Further, the appellant has nowhere expressed its inability to*

produce the parties. Therefore, the appellant itself has not discharged its duty in co-operating with the proceedings before the AO, as per the directions of the Hon'ble ITAT. It is also to be mentioned that this proceedings are in compliance to the directions by Hon'ble ITAT and hence, not being an original assessment proceedings, not necessary to issue a separate show cause notice as the issue in question were already flagged off. Therefore, contention of appellant that no show cause notice has been issued has no force.

5.10. *Therefore, looking to the facts and circumstances of this case, where the appellant could not justify the payment of commission to six parties amounting to Rs.16,79,620/-, nor it is verifiable from the details submitted by it, hence, the addition made in this regard deserves to be sustained. Accordingly, no interference is made to the findings of AO and appeal is dismissed on this ground.”*

3. Aggrieved by the order of Ld. CIT(A), the assessee is now in appeal before us and has raised the following two effective grounds :

1. *“On the point of facts and on point of law that the learned A.O. erred in disallowing the commission expenses and learned CIT erred in confirming the addition Rs.1679620/-.*

2. *On the point of facts and on point of law on the facts and circumstances of the case, the order passed by learned A.O. is bad both in the eye of law and in facts, which were scored altogether and learned CIT erred in confirming the addition Rs. 1679620/-.”*

4. During the course of hearing of the appeal, none appeared on behalf of the assessee nor any application is filed seeking for adjournment of the appeal. The case file reveals that the assessee filed the appeal in the Registry of the Tribunal on 11.09.2020. The Registry of the Tribunal pointed that the appeal is time barred by 132 days and appeal fees is also not paid and issued various notices to

comply the above defects duly intimating the date of hearing of the appeal also. However, the said notices were returned by the postal authorities with the remarks '*No such person at the address*'. The assessee company did not file any revised Form No.36 duly mentioning revised/change of address if any, so as to enable the Registry of the Tribunal to send notice to the correct address of the assessee. We may note that preferring an appeal by the assessee company does not mean mere formally filing it, but, also taking all the steps to effectively pursue the appeal. The conduct of the assessee-company in not furnishing revised/correct address if any, by filing Revised Form No.36 nor filing any condonation application for the delayed filing of appeal shows the negligent approach of the assessee company. In the absence of any co-operation from the side of the assessee company, we do not find any reason to keep the matter pending before us. We, therefore, have no option but to dispose of the appeal ex-parte qua the assessee, after considering the material available on record and after hearing the Ld. D.R.

5. During the course of hearing, the Ld. D.R. strongly supported the orders of the authorities below and prayed that the order of the Ld. CIT(A) be confirmed.

6. We have heard the Ld. D.R. and perused the material available on record. We find that the Ld. CIT(A) for the details reasons contained therein [which has also been reproduced under para 2.3] has decided the issue and upheld the order of A.O. The Ld. CIT(A) has also noted that assessee was asked to produce the parties, but, despite various opportunities, the assessee failed to produce the parties nor provided their new addresses. The Ld. CIT(A), therefore, upheld the disallowance of commission paid to six parties of Rs.16,79,620/-. Even before the Tribunal, the assessee company did not appear despite sending notices through Speed Post which have been returned by the postal authorities with the remarks "*No such person at the address*". We are of the view that when the appeal is filed before the Tribunal by the assessee company itself against the orders of the lower authorities, it is expected that the assessee company may put forth documentary evidences in

support of its contentions to decide the appeal as it is the duty of the assessee company to lead evidence in support of its claim and for the adjudicating authority to decide upon the sustainability of the claim on the basis of the evidence led by the parties before it. However, the assessee company neither appeared before the Tribunal nor placed any material to controvert the findings of lower authorities. In this view of the matter and in absence of any contrary material brought on record to rebut the findings of lower authorities, we find no reason to interfere with the order of CIT(A) and thus **we dismiss the grounds of the assessee.**

8. In the result, **appeal of the assessee is dismissed.**

Order pronounced in the open Court on 18.11.2022.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 18 November, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'C' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.