

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

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

ITA.No.2059/Del./2019  
Assessment Year 2013-2014

M/s. Hightech Infrahomes Pvt. Ltd., SCO No.41, Sector-15, Faridabad. Haryana. PIN 121 002 PAN AAACJ9595L	vs.	The Income Tax Officer, Ward – 1 (3), Faridabad.
(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), Faridabad, dated 22.01.2019 in Appeal No.10451/2017-18 relating to the A.Y. 2013-2014.

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

2.1. The assessee is a Company engaged in the business of Builders & Developers. The assessee company filed its return of income electronically for the A.Y. 2013-14 on 30.09.2013 declaring NIL income. Subsequently, the case of the assessee company was selected for scrutiny under CASS. The A.O. issued statutory notices under section 143(2) and 142(1) of the I.T. Act, 1961 dated 03.09.2014, 14.08.2015 and 08.01.2015 respectively, in response to which, the Authorised Representative of the assessee company appeared before the A.O. and filed details/replies from time to time as called for.

2.2. During the course of assessment proceedings, the A.O. noted that the gross turnover of the assessee company was at Rs.18 crores by sale of land. The A.O. noted that assessee company had single land transaction of Rs.18 crores made between parent company and subsidiary company and paid commission on this single transaction to

13 different parties and claimed the commission expenses of Rs.1,16,24,445/- in the P & L A/c. The A.O. asked the assessee to furnish details and purpose/justification of commissions so paid. The A.O. was not satisfied with the explanation of assessee company. For the reasons stated in the order, he made the addition of Rs.1,16,24,445/- as against the returned income of assessee company at Rs. NIL and passed the assessment order under section 143(3) of the I.T. Act, 1961 dated 30.03.2016.

2.3. Aggrieved by the order of the A.O, the assessee company carried the matter in appeal before the Ld. CIT(A), who vide order dated 22.01.2019 confirmed the addition made by the A.O.

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

1. *Because the action for making disallowance of commission expenses for Rs.1,16,24,445/-, is being challenged on facts & law which is unsustainable on*

*the true & correct interpretation of the facts, documents, evidences and pleadings and additionally in the alternative the quantum for making disallowance of commission thereof too is being disputed.*

- 2. Because the action for making disallowance of commission expenses for Rs.1,16,24,445/-, is being challenged on facts & law by returning erroneous finding that commission paid to 16 parties on a single transaction of land is unreasonable & against the market trend.*
- 3. Because the action for making disallowance of commission expenses for Rs.1,16,24,445/-, is being challenged on facts & law as deptt. cannot step into the shoes of the businessman & decide reasonableness & commercial expediency of the expenditure.*
- 4. For any consequential relief and/or legal claim arising out of this appeal and for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee.”*

4. The case file reveals that the assessee company filed the appeal in the Registry of the Tribunal on 08.03.2019. Thereafter, Registry of the Tribunal issued notices to the assessee company duly intimating the date of hearing of the appeal. However, the said notices were returned by the postal authorities with the remarks "*Refused to receive the envelope*". We are of the view 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 receiving the notices issued by the Tribunal and in not choosing to appear before the Tribunal 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. On the basis of material available on record, A.O. completed the assessment at an assessed income of

Rs.1,16,24,445/- by making addition on account of commission paid to different persons as against the returned filed by the assessee company at Rs.NIL. The A.O. made the impugned addition because the assessee company had failed to offer proper explanation/justification towards the commission paid to different persons. Even in First Appeal before the Ld. CIT(A) also the assessee company did not corroborate with supporting documentary evidences and justification of the commission paid to different persons on the sale of project. Therefore, the Ld. CIT(A) had confirmed the addition made by the A.O.

6. Before us, the Ld. D.R. strongly supported the orders of the lower authorities contending, *inter alia*, that since the assessee company did not put forth proper documentary evidences and justification of commission paid to different persons, the A.O. made the impugned addition and on appeal, the Ld. CIT(A) confirmed the addition. He, prayed that the orders of the authorities below be confirmed.

7. We have heard the Ld. D.R. and perused the material on record. A.O. had made addition of Rs.1,16,24,445/- being the amount of alleged commission paid by the assessee to 13 persons for a single land deal of Rs.18 crores. A.O. has noted that despite various opportunities, assessee could not justify the payment of commission. He accordingly disallowed the commission paid. In appeal, the Ld. CIT(A) also confirmed the same. Even before us, the assessee company did not appear despite sending notices through Speed Post which have been returned by the postal authorities with the remarks "*Refused to receive the envelope*". We notice 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 some 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. No material has been placed by assessee 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.