

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

**BEFORE,  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.4651/Del/2017  
(ASSESSMENT YEAR 2011-12)**

**ITA No.7123/Del/2019  
(ASSESSMENT YEAR 2011-12)**

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| Manex Infra Private Limited<br>H.No.1022, Housing Board<br>Colony, Sector-21C,<br>Faridabad (Haryana)<br>PAN-AABCM 3477D | Vs. | Income Tax Officer<br>Wad-6(2),<br>New Delhi |
| <b>(Appellant)</b>   |     | <b>(Respondent)</b>                          |

|               |  |
|---------------|--|
| Appellant by  | Mr. Ajay Kumar, Advocate   |
| Respondent by | Mr. Jeetender Chand, Senior<br>Departmental Representative<br>("Sr. DR" for short) |

**ORDER**

**PER ANADEE NATH MISSHRA, AM:**

(A) Both the appeals have been filed by the Assessee against the separate orders dated 03/04/2017 and 28/06/2019 passed by the learned Commissioner of Income Tax (Appeals), New Delhi ["Ld. CIT(A)", for short], for Assessment Year 2011-12. Grounds taken in these appeals are as under:

ITA No.4651/Del/2017

- “1. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in not considering the Application under rule 46A for additional evidence.*
  
- 2. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and facts on confirming the assessment order framed by the Ld. A.O. u/s 144.*
  
- 3. That having regards to the facts and circumstances of the case, Ld. A.O. has not served notice u/s 143(3) within the prescribed time in the provisions of the law.*
  
- 4. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in confirming the addition of Ground No.3 to 16 which are as under:*
  - (i) Addition of Rs.20,00,000/- on account of purchases.*
  - (ii) Addition of Rs.2,00,000/- on account of consumables.*
  - (iii) Addition of Rs.20,000/- on account of cartage charges.*
  - (iv) Addition of Rs.95,93,779/- on account of job work expenses.*
  - (v) Addition of Rs.50,000/- on account of other expenses.*
  - (vi) Addition of Rs.12,00,000/- on account of director’s remunerations.*
  - (vii) Addition of Rs.15,00,000/- on account of salary, wages, allowance and bonus.*
  - (viii) Addition of Rs.20,000/- on account of general expenses.*
  - (ix) Addition of Rs.40,000/- on account of office expenses.*
  - (x) Addition of Rs.6,31,764/- on account of disallowances u/s 43B.*
  - (xi) Addition of Rs.20,00,000/- on account of other liabilities.*
  - (xii) Additional of Rs.42,00,000/- on account of sundry creditors.*
  - (xiii) Addition of Rs.50,000/- on account of disallowances out of depreciation.*
  - (xiv) Addition of Rs.27,00,000/- on account of addition u/s 68 of the Act.*
  
- 5. That having regards of facts and circumstances of the case, the order framed by the Ld. CIT(A) is not set self speaking order and liable to be quashed.*
  
- 6. That the Ld.CIT(A) has not afforded proper opportunity to the appellant to explain the matter and whole order is arbitrary and against the principles of nature justice.*

7. *That the appellant craves leave to add, modify, or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

ITA No.7123/Del/2019

*“1. The order under section 271(1) (b) passed by the Assessing Officer is erroneous on the facts and in the law.*

*2. Learned Assessing Officer has erred in law and on facts by levying penalty of Rs.10,000/- under section 271(1)(b) as the notice u/s 143(2) dated 03.08.2012 issued by the learned AO was never received by the appellant.*

*3. Learned Assessing Officer has erred in law and on facts by levying penalty of Rs.10,000/- under section 271(1)(b) as the appellant endured professional misconduct on the part of authorized representative.*

*4. All the above grounds are independent and without prejudice to other. The appellant craves the right to add, modify, amend and delete the grounds of appeal during the course of hearing.”*

(A.1) For the sake of convenience, both appeals were heard together and they are being disposed of through this common and consolidated order.

(A.2) In this case, assessment order dated 06/03/2014 was passed by the Assessing Officer u/s 144 of the Income Tax Act. This order was passed to the best of the Assessing Officer’s judgment. The Assessing Officer took adverse view of non-compliance/ partial compliance with notices issued during the assessment proceedings; and went on to pass an *ex-parte* assessment order u/s

144 of Income Tax Act to the best of his judgment. The income assessed by the Assessing Officer was Rs.2,59,21,281/- as returned income of Rs.16,95,738/-. Aggrieved, the assessee filed an appeal in the office of learned CIT(A). Vide impugned appellate order dated 03/04/2017, the Ld. CIT(A) dismissed the assessee's appeal. Aggrieved again, the assessee has filed this present appeal in Income Tax Appellant Tribunal, vide ITA No.4651/Del/2017.

(A.3) Separately, the Assessing Officer passed penalty order dated 15/03/2018 passed, u/s 271(1)(b) of Income Tax Act, levying penalty of Rs.10,000/-, taking an adverse view of the assessee's non compliance with notices during assessment proceedings. Aggrieved, the assessee filed appeal in the office of learned CIT(A). Vide impugned appellate order dated 28/06/2019, the Ld. CIT(A) dismissed the assessee's appeal. Aggrieved again, the assessee filed this present appeal vide ITA No.7123/Del/2019 in Income Tax Appellate Tribunal against the aforesaid impugned appellate order dated 28/06/2019 of the Ld. CIT(A).

(B) Both the appeals filed by the assessee vide aforesaid ITA No.4651/Del/2017 and ITA No.7123/Del/2019 were heard together by us. At the time of hearing, the learned Counsel for the assessee submitted at the outset that the assessee was unable to fully avail of the opportunities provided by the Assessing Officer, and could not represent its case properly before the Assessing Officer during the assessment proceedings and during the penalty proceedings because of adverse condition of health of the Director Mr. S.K. Mittal. A certificate of Postgraduate Institute of Medical Education and Research, Chandigarh was also filed from the assessee's side which certified that the aforesaid Mr. S.K. Mittal was physically handicapped and had 47% impairment in relation to his whole body. It was further certified that the condition was not likely to improve and also, that reassessment was not recommended. The learned Counsel for the assessee submitted before us that because of serious physical impairment of the Director, the assessee was not able to avail of opportunities provided by the Assessing Officer during the assessment proceedings and the penalty proceedings; and could not present its case properly.

(B.1) We heard the representatives of both sides; the Ld. Counsel for the assessee and the Ld. Sr. DR for Revenue. Representatives of both sides were in agreement that there was reasonable cause for non-compliance with the notices on the part of the assessee, both during the assessment proceedings and during the penalty proceedings; in view of the adverse physical condition of the Director. Representatives of both sides were also in agreement that the aforesaid impugned appellate orders dated 03/04/2017 and 28/06/2019 of the Ld. CIT(A) may be set aside and the issues in dispute in the present two appeals vide ITA No.4651/Del/2017 and 7123/Del/2019 may be restored to the file of the Assessing Officer with the direction to pass fresh orders in accordance with law after providing reasonable opportunity to the assessee. The learned Counsel for the assessee further gave the assurance that proper alternate arrangements will be made to ensure due compliance with the notices. In view of the foregoing, and in the specific facts and circumstances of the present appeals before us, and further as representatives of both sides are in agreement with this, we set aside the aforesaid impugned appellate orders dated

03/04/2017 and 28/06/2019 of the learned CIT(A) and direct the Assessing Officer to pass *denovo* orders in accordance with law after providing reasonable opportunities to the assessee. The assessee is directed to make alternate arrangement so that despite the adverse physical condition of the aforesaid Director, Mr. S.K. Mittal, due compliance with notices of the Assessing Officer is ensured. Both the appeals and all the grounds of the appeal contained therein are disposed of in accordance with the aforesaid directions.

(C) For statistical purposes, both appeals are treated as partly allowed.

This order was already pronounced orally on 21<sup>st</sup> November, 2022 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. Now this order in writing is signed today on 22/11/2022.

Sd/-  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Sd/-  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 22/11/2022  
Pk

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW, DELHI