

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'C' : NEW DELHI)

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

ITA No.4009/Del/2018
(Assessment Year : 2013-14)

M/s. ITES Horizon Pvt. Ltd. C/o. Bar Council of India, 21, Rouse Avenue Institutional Area, Near Bal Bhawan, New Delhi-110002 PAN : AAACI9786L	Vs.	ITO, Ward-12(4), New Delhi
Appellant		Respondent

Assessee by	Shri Narayan Kumar, CA
Revenue by	Shri Arvind Kumar Bansal, Sr. DR

Date of hearing:	05.12.2022
Date of Pronouncement:	06.12.2022

ORDER

Per Anubhav Sharma, JM :

The appeal has been filed by the assessee against order dated 21.03.2018 in appeal no. 326/16-17/CIT(A)-4, New Delhi for assessment year 2013-14 passed by Commissioner of Income Tax (Appeals)-4, New Delhi (hereinafter referred to as the Ld. First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 28/03/2016

u/s 143(3) of the Income Tax Act, 1961 passed by Income Tax Officer, Co. Ward-12(4), New Delhi (hereinafter referred to as the Assessing Officer or 'Ld. AO').

2. Heard and perused the record.

3. Ld. Assessing Officer has disallowed Rs. 50,00,000/- on account of book expenses observing that assessee has not been able to justify the utility of the expenses vis-a-vis its business activity. The case of assessee is that assessee had purchased books worth Rs. 50,00,000/- and as it is engaged in business of conducting examinations for Bar Counsel of India. These books were purchased and distributed amongst students and teachers of various schools. This plea was considered by Ld. AO to be mere after thought. The Ld. CIT(A) while upholding the disallowance has however, dismissed application of assessee under Rule 46A of the Income Tax Rules, when assessee had sought opportunity to submit relevant evidence of the name of schools where books were distributed.

4. The ld. CIT(A) has made following observations with para no. 4.7 in this regard :-

“4.7 As per the submission of the appellant, the appellant shifted to the new place in the month of September 2015, on the other hand the AO requisitioned the details in the month of March 2016. It was not as if in the month of September 2015, the appellant company was not aware that their matter is pending in scrutiny proceedings. Further, even if they were not able to locate the file at the time of assessment, they took numerous adjournments before me as well and then filed a submission enclosing the said list as additional evidence in such a cryptic manner. The appellant has no where mentioned as to which one of the circumstances as enumerated in Rule 46A makes it entitled to seek admission of additional evidence. The additional evidence of the appellant cannot be accepted at this stage and hence the same are rejected.

Even otherwise, the list merely containing names of seven Govt. Middle School in Nagaland where the appellant claims to have distributed books on Information Technology is devoid of any evidentiary value as there is no proof, whatsoever, of distribution of such books.”

5. The Bench is of considered opinion that when the Ld. AO had made observations about lack of evidence then rejecting additional evidence on ground of delay and at same time observing that additional evidence had no merits, cannot be sustained. As such to allow admitting additional evidence, the merits of the additional evidence need not be seen so as to consider it not sufficient to prove a fact. Only relevancy of the additional evidence to the grounds raised in appeal and the fact that there is plausible explanation for producing it at appellate stage is required to be seen.

6. In the light of aforesaid, the appeal of assessee is allowed for statistical purposes and issue is restored to the files of Ld. CIT(A) with direction to consider the additional evidence of the assessee and to decide the issue on merits.

Order pronounced in the open court on 06 December, 2022.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 06 .12.2022

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI