

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.1097/Del./2020
(ASSESSMENT YEAR : 2016-17)**

RB Diversified (P) Ltd.,
403, Prabhat Kiran,
17, Rajendra Place,
New Delhi – 110 008.

vs. ACIT, Circle 20 (2),
New Delhi.

(PAN : AADCR3205J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Tarandeep Singh, CA
REVENUE BY : Shri Ajay Kumar Arora, Sr. DR

Date of Hearing : 02.01.2023
Date of Order : 05.01.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of Id. CIT (A)-7, New Delhi dated 31.01.2020 for the Assessment Year 2016-17.

2. The grounds of appeal taken by the assessee read as under :-

“1. That on facts and in law, orders passed by the Commissioner of Income Tax (Appeal)-VII, New Delhi [hereinafter referred to as the "CIT(A)"] and Assessing Officer [hereinafter referred to as the "AO"] are bad in law and void ab initio.

2. That on facts and in law the CIT(A) has erred in violating principle of natural justice.

2.1 That on facts and in law the CIT(A) has erred in refusing request made for adjournment vide letter dated 28th January 2020.

2.2 That on facts and in law the CIT(A) has erred in not allowing opportunity to make oral representations once request made for adjournment was rejected.

3. That on facts and circumstances of the case and in law the AO erred in holding and CIT(A) has further erred in upholding that the appellant had furnished inaccurate particulars of its income vis a vis following additions/disallowances:

- (i) Disallowance u/s 14A of Rs.2,75,000/-
- (ii) Provision for unrealized losses of Rs.78,08,778/-
- (iii) Interest on late payment of TDS of Rs.32,034/-
- (iv) STCG Tax enhanced by Rs.18,09,210/-

4. That on facts and circumstances of the case and in law the Ld. CIT(A) has erred in upholding levy of penalty of Rs.45,89,840/- u/s 271 (1)(c) of the Act.

5. That on facts and in law the AOI CIT(A) have erred in wrongly computing the "Amount of Tax Sought to be evaded".

3. Though assessee has raised various grounds, at the outset, Id. Counsel of the assessee has submitted that the Id. CIT (A) has dismissed this appeal ex-parte by noting that notices have been sent which have remained uncomplied with and that necessary evidence of the Id. Counsel being unwell has not been provided to the Id. CIT (A). In this regard, Id. Counsel for the assessee submitted that assessee has tried to submit adjournment petition but the office of Id. CIT (A) refused to accept the same, however assessee has sent the same by speed post. He further

pleaded that whether evidence of the ld. Counsel of the assessee being unwell was required or not was never conveyed to the assessee. In these circumstances, ld. Counsel submitted that there is lack of proper opportunity of being heard and he pleaded that a chance may be given to the assessee before the ld. CIT (A) to canvass the appeal properly. He also undertook to cooperate with the proceedings before the ld. CIT (A).

4. Per contra, ld. DR for the Revenue relied upon the orders of the ld. CIT (A) but he was not opposed to the proposal to remit back the matter to the ld. CIT (A).

5. Accordingly, in the interest of justice, we remit the issue to the file of ld. CIT (A). Ld. CIT (A) is directed to consider the issue afresh after giving the assessee proper opportunity of being heard. Ld. Counsel for the assessee has also undertaken to cooperate and he is directed to do so.

6. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on this 5th day of January, 2023.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated the 5th day of January, 2023
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-7, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.