

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "DB" NEW DELHI]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND**

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 15/DDN/2019 (A.Y 2014-15)

Shri Bipin Singh Rana, Prop. M/s. Shivalik Construction & Shivalik Hotel, West Pokharkhali, Almora, Uttrakhand – 263 601. PAN No. AEUPR3130E (APPELLANT)	Vs.	ACIT, Circle : 3, Nainital. (RESPONDENT)
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Assessee by	Shri Prashant Kakkar, Advocate;
Department by	Ms. Poonam Sharma, Addl. CIT- D. R.;

Date of Hearing	12.12.2022
Date of Pronouncement	09.01.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Haldwani [hereinafter referred to CIT (Appeals) dated 13.03.2019 for assessment year 2014-15.

2. The assessee has raised the following substantive grounds of appeal:-

I. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals), erred in confirming the addition of Rs.23,15,360.00

II. The Appellant respectfully, submits as under:-

1. The Learned Commissioner of Income Tax Appeals (CIT-A) has without going into the facts has sustained addition aggregating to Rs.23,15,360.00

2. The Learned CIT-A has sustained the addition after being aware that the appellant had not agreed for additions made and as the case was being barred by limitation the appellant did not get proper opportunity of being heard.

3. That the order is bad in law, not in agreement with facts and is against the principles of natural justice.”

3. Brief facts of the case are that, a survey u/s 133A of the Act was carried out on 16/11/2013 in the business premises of the assessee. The case of the assessee was selected for compulsory scrutiny. The assessment order came to be passed u/s 143(3) of the Act on 30/12/2016 by assessing the total income of the assessee at Rs. 48,21,376/- as against the returned income of Rs. 25,06,020/-.

4. Aggrieved by the assessment order dated 30/12/2016, the assessee has preferred an appeal before the CIT(A) mainly on the ground that the assessment order passed based on the admission/surrender made by the counsel for the assessee, wherein the assessee has not given any consent for

such admission/surrender. The Ld. CIT(A) vide order dated 13/03/2019 dismissed the appeal filed by the assessee.

5. As against the order of the Ld.CIT(A) dated 13/03/2019, the assessee has preferred the present appeal on the grounds mentioned above.

6. The Ld. Counsel for the assessee submitted that the Ld.CIT(A) has not gone into the facts while sustaining the addition of Rs. 23,15,360/- further submitted that, the assessee did not get proper opportunity of being heard wherein the Ld.CIT(A) has sustained the addition after being aware that the assessee had not agreed for addition made and as the case was being barred by limitation.

7. Per contra, the Ld. Counsel for DR submitted that the additions were made by the A.O. based on the surrender/admission made by the representative of the assessee. Further submitted that, the assessee cannot retract the admission made by his representative before the A.O. merely by filing appeal through different advocate/chartered accountant the admission made by the representative of the assessee is binding on the assessee. Therefore, the assessee cannot find fault with the orders of the Lower Authorities. Thus, the Ld. DR relied on the orders of the Lower Authorities.

8. We have heard the parties perused the material available on record and gave our thoughtful consideration.

9. It is not in dispute that during the assessment proceedings in response to show cause notice dated 22/12/2016, the representative of the assessee attended on 27/12/2016 and vide order sheet entry dated 27/12/2016 the AR of the assessee conveyed his consent for making the additions, accordingly based on the admission of the AR of the assessee the assessment order came to be passed.

10. During the appeal proceedings before the CIT(A), the assessee specifically contended that the assessee has not agreed with the additions/disallowance made before the A.O., the admission made by the AR of the assessee is without the authority, therefore, sought for setting aside the assessment order. Even before us, the Id. Counsel for the assessee vehemently contended that the admission made by the AR before the Assessing Officer is without the consent on the assessee, therefore, the same is not binding on the assessee. Further submitted that, at no point of time the assessee has agreed for any additions and assessee did not get proper opportunity of being heard.

11. The assessee has also filed an affidavit before us stating that the Authorized Representative has surrendered before the A.O. for which the assessee has not given the consent. The portion of the said statement is as follows:-

“5. That the Authorized Representative of the undersigned appellant had surrendered the additions made to the income of the appellant for which the appellant had not given his consent.”

12. During the hearing the Bench has posed a specific question regarding the action taken for professional misconduct against the AR who has surrendered before the A.O. without the consent by the assessee. It has been informed to the Bench by the Id. Counsel for the assessee that, the assessee has not taken any action against the AR who claimed to have been surrendered before the A.O. without the consent of the assessee. Therefore, the said allegation made by the assessee against the AR who has represented the assessee before the Ld. A.O. cannot be believed merely based on an affidavit filed by the assessee, that too when nothing brought on record by the assessee regarding the action taken against the said AR for alleged professional misconduct.

13. Be that as may, the fact remains that, the Ld. A.O. has not decided the issues involved before him on its merit and passed the assessment order only based on the admissions/surrender made by the AR, the Ld. A.O. ought to have decided the matter on merit in accordance with law, not based on the admission or refusal of the assessee. The principle of estoppels is not applicable to income tax proceedings and the authorities should bear in mind that the right income of the assessee to be taxed in the right assessment year and well within the limitation as prescribed in the Act. Therefore, we deem it fit to remand the matter to the file of the A.O. for de-novo consideration with a direction to ignore the surrender made during the assessment proceedings and decide the matter on merit.

14. Accordingly, the Grounds of Appeal No. 2 & 3 filed by the Assessee are allowed for statistical purpose by remanding the matter to the file of Ld. A.O. for de-novo consideration to decide the matter on merit, subject to condition that the assessee shall pay a sum of Rs. 5,000/- to the Prime Minister's National Relief Fund. Since, we have remanded the matter to the file of Ld. A.O., the other ground of appeal of the assessee on merit requires no adjudication at our hands.

15. In the result, appeal of the Assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on : 09.01.2023.

Sd/-
(B. R. R. KUMAR)
AC.COUNTANT MEMBER
Dated : 09/01/2023
*R.N, Sr. PS**

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI