

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'G' : NEW DELHI)

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.6621/Del/2018, A.Y. 2014-15

ITA No.7059/Del/2019, A.Y. 2014-15

Sai International I-187, Ashok Vihar Phase-I, Delhi PAN : ACHFS2413E	Vs.	ACIT, Circle-34(1) New Delhi
Appellant		Respondent

Assessee by	None
Revenue by	Ms. Kajal Singh, Sr. DR

Date of hearing:	11.01.2023
Date of Pronouncement:	11.01.2023

ORDER

Per Anubhav Sharma, JM :

Both appeals have been filed by the Assessee against order dated 16.03.2018 in Appeal No. 531/16-17 assessment year 2014-15 passed by Commissioner of Income Tax (appeals)-12, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 30/12/2016 u/s 143(3) of the Income Tax Act, 1961 passed by ACIT, Circle-34(1), New Delhi (hereinafter referred to as the Assessing Officer or 'AO').

2. Assessee filed return of income declaring total income of Rs. 17,03,630/-. Subsequently, the case was selected for scrutiny and Ld. AO had disallowed commission expenses paid to 8 parties to the extent of Rs. 33,81,600/-. The background to it being that in the relevant financial year, assessee paid commission to parties in regard to sale transaction totaling Rs. 1,04,80,630/- and deducted tax at source. The Ld. AO issued notices to 12 parties u/s 133(6) to confirm the commission payment. Confirmation of four was received therefore, addition in regard to 8 parties was made the Ld. CIT(A) called a remand report from Ld. AO to inquire about the services of notices. The Ld. CIT(A) also gave opportunity of hearing to the assessee to bring before the first appellate authority details and evidences as to how the agents helped him procuring the sales but no evidence was led. After giving due notice to the assessee for explaining the service provided for which commission has been given the whole of commission expense was added. The Ld. CIT(A) enhanced income by Rs. 70,99,030/-.

2.1 Accordingly assessee is in appeal raising following grounds in **ITA No. 6621.Del.2018**

1. *“On the facts and circumstances of the case, the order passed by Ld AO and Ld CIT(A) is bad both in eyes of law and on facts.*
2. *That the Ld CIT (A) erred in law as well as on facts by enhancing the addition by Rs 70,99.030/- by treating the total disallowance of commission expenses amounting Rs. 1,04,80,630/-.*
3. *That Ld. CIT(A) has erred in law as well as on facts by upholding the addition made by Ld AO and enhancement made u/s 251 without providing proper opportunities to the appellant.*
4. *That the addition enhanced by Ld. CIT(A-) is erred in fact and law and is against the powers provided u/s 251 of the Income Tax Act, 1961.*
5. *That Ld CIT(A) erred in law and also on facts by making enhancement of income without making proper inquiries and without affording the proper opportunity of being heard.*

6. *That Ld. CIT(A) erred in law as well as on facts by dismissing the ground for not charging interest u/s 234B of the Income Tax Act. 1961 without considering the merits of the case.*

7. *That the Ld. Assessing Officer erred in law and fact as well by initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act. 1961.*

8. *That the appellant reserves the right to add, modify, alter, amend or delete any of the grounds.”*

3. Further the Ld. CIT(A) initiated penalty proceedings u/s 271(1)(c) of the Act for inaccurate claim of deduction for commission expenses to the tune of Rs. 70,99,030/- and imposed penalty of Rs. 21,93,600/-.

3.1 The assessee is in appeal vide **ITA No. 7059.Del.2019** raising following grounds :-

“1. On the facts and circumstances of the case, the order passed by Ld CIT(A) is bad both in eyes of law and on facts.

2. That the Ld. CtT(A) erred in law and fact as well by passing an penalty order u/s 271(1)(c) r.w.s 274 of the Income Tax Act, 1961.

3. That the Ld CIT (A) erred in law as well as on facts by enhancing the addition by Rs 70,99,030/- and thereon imposing a penalty of Rs.21,93,600/-.

4. That Ld. CIT(A) has erred in law as well as on facts by passing penalty order u/s 271(1)(c) without providing proper opportunities to the appellant.

5. That the appellant craves leaves to add. Alter, delete rectify and modify any of the grounds of appeal before or at the time of hearing the appeal.”

4. Heard. As the case was called for hearing today, non-appeared for the assessee and the record shows on earlier four occasions, none has appeared for the assessee. The notices issued for today have been received back to the report that “assessee has left the address”. The record shows earlier notices were issued through department and same were received back “served”. It appears that assessee is not interested to prosecute the appeals. Accordingly,

arguments of Ld. DR were heard who supported the orders of Ld. Tax Authorities Below.

4. Appreciating the matter on record, it can be observed that Ld. AO had merely proceeded on the basis of confirmations without making any inquiry about the nature of business of the assessee and the services rendered by the respective parties to justify the payment of commission. He only proceeded on the premises of genuineness of the parties. Ld. CIT(A) after giving due notice seeking explanation from the assessee as to what were the sort of services rendered to justify payment of commissions proceeded to enhance the addition. As inspite of several effective opportunities no evidence was led by the assessee, enhancement was made. The findings arrived by Ld. CIT(A) require no interference. The grounds raised in **ITA No. 6621.Del.2018** have no substance, **the same is dismissed.**

5. As in spite of opportunity assessee had failed to substantiate the commission expenses, the findings of Ld. CIT(A) levying penalty on the ground of inaccurate claim requires no interference, so **ITA No. 7059.Del.2019** also stands dismissed.

Order pronounced in the open court on 11 January, 2023.

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:-11 .01.2023

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI