

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.1315/DEL/2020
[Assessment Year: 2007-08]**

M/s Preet Finlease Pvt. Ltd. C/o-Goel Subhash & Associates, Chartered Accountants, #6269/4, Ahata Kedar Nath, Nicholson Road, Ambala Cantt. Haryana-133001	Vs	The Income Tax Officer, Ward-20(1), New Delhi
PAN-AADCP2401N		
Assessee		Revenue

Assessee by	Sh. Tejmohan Singh, Adv.
Revenue by	Sh. Ajay Kumar Arora, Sr. DR

Date of Hearing	28.12.2022
Date of Pronouncement	16.01.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of Ld. CIT(A)-7, New Delhi, dated 24.01.2021, pertaining to Assessment Year 2007-08.

2. The grounds of appeal reads as under:-

“1. That the Ld. Commissioner of Income Tax(Appeals) has erred in law as well as on facts in passing an ex-parte order without affording a proper opportunity of hearing which is against the Principals of Natural Justice which is illegal, arbitrary and unjustified.

2. Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the addition of Rs.1,30,23,907/- made on account applying the provisions of Section 68 which is arbitrary and unjustified.”

3. This is second round of appeal before ITAT. In the earlier round vide order dated 01.07.2016, the ITAT has remanded the issue to the file of the Assessing Officer after duly noting that there was remand report from the Assessing Officer and the additional evidences have been submitted. The order of the ITAT may be gainfully referred as under:-

“2. We have heard arguments of both the sides and carefully perused the materials placed on the record. The Ld. Assessee’s Representative (AR) contended the AO proved assessment order without allowing proper and reasonable opportunity of being heard and only on this Court. The impugned assessment order is not sustainable in the eyes of law. The Ld. AR also drawn our attention towards remand report of the AO submitted to CIT(A) and contended that the AO has not made any allegation in the remand report about the contentions and evidence of the assessee, thus, source of deposit of Rs. 8,69,375/- in Punjab National Bank of the assessee needs to be accepted and addition made in this regard may be deleted.

3. Replying to the above the Ld. Departmental Representative (DR) vehemently contended that the CIT(A) has not given any finding on the allegations and comments of the AO made in the remand report. The Ld. DR, supporting the action of the AO and pressing in to service grounds no. 1 , 2 & 3 of the Revenue strenuously contended that the CIT(A) grossly erred in accepting the additional evidence furnished by the assessee during appellate proceedings contravening the provisions of Rule 46A of IT Rules, 1962. The Ld. DR vehemently pointed out that the CIT(A) was not correct and not appreciating the fact that the assessee was afforded ample opportunities to furnish the requisite details and evidences in respect of the case credits and the assessee failed to discharge its onus to prove that whatever was claimed by it, was true. The ld. DR also contended that the CIT(A) also ignored this important fact that the assessee company denied to have the ‘Bank Account’ in question by filing an affidavit during the assessment proceedings and it was owned up by the assessee only after confronted with it. The Ld. DR lastly prayed that the department has no serious objection if the case is restored to AO to assessment stage.

4. The ld. AR also placed rejoinder to the above submissions of ld. DR and pointed out that even remand report of the AO submitted during first appellate proceedings supports the case of the assessee. However, he fairly accepted the assessee has

no objection if case is restored to the file of the AO for afresh adjudication.

5. On careful consideration of above rival submissions and perusal of assessment order as well as order of the CIT(A), we clearly observe that assessee filed unaudited balance sheet at the Fegend of the assessment proceedings. All other relevant evidence was submitted under Rule 46 A of the Rules as an additional which was admitted and considered by the CIT(A) after calling remand report from the AO. However, we are agree with the contention of the Ld. DR that the Remand report was not property considered by the first appellate authority as the CIT(A) has not given any findings about the comments and stand of the AO in the remand report. In these circumstances, we are inclined to accept submissions of the Ld. DR, which are also expressly accepted by the Ld. AR, that the case deserves to be restored to the file of the AO for afresh and denovo reassessment after providing due opportunity of being heard to the assessee. We order accordingly.”

4. Consequent to the aforesaid remand, the Assessing Officer took up the matter and simply noted that the assessee has not responded to the notices and so he has finalized his ex-parte order dated 27.12.2017. In the said order, there is no whisper of the ITAT order and finding regarding the existing of additional evidences and remand report, solely on the ground that the assessee has not responded the notices, the Assessing Officer disallowed the deposits of both cash and cheques in the bank account. There is no mention as to whether the books of account co-related or deviated from the said deposits.

5. Upon assesee's appeal, the Ld. CIT(A) rejected the assessee's contention of lack of opportunity by noting that the Assessing Officer has given several notices. As far as the order Ld. CIT(A) is concerned, he said that during the appellate proceedings inspite of repeated opportunity provided as recorded in para 2 and 3, the assessee company has not substantiated the grounds of appeal taken.

6. We note that in para no.2 and 3 of the order of the Ld. CIT(A) the mention is regarding several opportunities given by the Assessing Officer, there is no whisper of any notices issued by the Ld. CIT(A) himself. In this background, assessee has filed this appeal.

7. Having heard both the parties and perused the records, we find that the ITAT in its order has given comprehensive details of the additional evidences being submitted, the remand report of the Assessing Officer and other aspects. These have not been at all considered in the orders of the authorities below and the assessee's appeal has been dismissed by the Assessing Officer as well as the by the Ld. CIT(A) only on the ground that nobody has appeared before the Assessing Officer. No cognizance of the ITAT finding is anywhere therein in the orders of the authorities below. In these facts, we are of the considered opinion, the issue needs to be remitted back to the file of the Assessing Officer. The Assessing Officer is directed to take the cognizance of the ITAT order dated 01.07.2016, the remand report and the additional evidences mentioned in the order of the ITAT and thereafter pass order as per law after giving the assessee an opportunity of being heard.

8. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 16th January, 2022.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Delhi; Dated: 16.01.2022.

Shekhar

Copy forwarded to:

1. Appellant

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi