

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

BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER

**ITA No.9431/DEL/2019
Assessment Year: 2002-03**

Major Suresh Yadav (Retd.) Farm No.36, Dera Mandi Road Gaon, Near Chattarpur, New Delhi PAN No.AAUPY5153C	Vs	ITO Ward- 24 (3) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Mukesh Kohli, CA
Respondent by	Sh. Hemant Gupta, Sr. DR

Date of hearing:	23/01/2023
Date of Pronouncement:	23/01/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal filed by the assessee is preferred against the order of the CIT(A)-34, New Delhi dated 22.09.2019 for A.Y. 2002-03.

2. The assessee has raised the following grounds of appeal :-
1. *That the order passed by the learned AO/ Commissioner of Income-tax (Appeals), is erroneous, contrary to the facts and circumstances of the case, based or surmises sad conjectures,*

against law and principles of natural justice and thus erroneous and unsustainable.

2. *Based on the facts and circumstances of the case and in law, the learned AO/Commissioner of Income-tax (Appeals) has erred in calculating income based on inaccurate assumptions.*

3. *Based on the facts and circumstances of the case and in law, the learned AO/Commissioner of Income-tax (Appeals) has erred in not taking into consideration the number of connection confirmations given by Media companies to the income Tax department given to the Appellant.*

4. *Based on the facts and circumstances of the case and in law, the learned AO/Commissioner of Income-tax (Appeals) has erred in taking a standard rate for all the customers while calculating Income which is not a practical scenario.*

5. *Without prejudice to the above, no proper notice was duly served on the Appellant. Hence, the Appellant was prevented by sufficient cause and opportunity provided was inadequate.*

Without prejudice to the above, the learned AO erred on facts and in law in levying interest under section 234A, 234B and 234C of the Act.

3. The assessee has raised the additional grounds of appeal :-

1. *That Hon'ble Tribunal has jurisdiction to examine a question of law which arises from the fact as found by authority below and having bearing on tax liability of the assessee even through such question was not raised before authority below nor in grounds in*

appeal but raised by way of additional issue in forwarding letter.

2. That the CIT(A) as well as A.O has erred on facts and under the law because the A.O. has issued reassessment notice on borrowed satisfaction whereas it has to be on his own satisfaction.

3. That the CIT(A) and A.O. has erred on facts and under the law because the A.O. has not made independent inquiry but only relied upon the order passed by Entertainment Officer, New Delhi and order confirmed by Deputy Commissioner (Taxes).

4. That the CIT(A) and A.O. has erred on facts and under the law because that the appeal has been pending before Appellate Authority, Excise and Luxury & entertainment Tax, Government of NCT of Delhi, Since 25/08/2005.

4. Representatives of both the sides were heard at length. Case records carefully perused. The quarrel started when the AO received information that during the period 01.04.2001 to March 31.03.2002, the assessee had 28000 cable connection subscribers whereas the assessee had paid entertainment tax only to the extent of 2000 cable connections. After detailed enquiries, the Entertainment tax officer had concluded that the assessee had 28000 cable connection subscribers and accordingly the AO deputed income tax Inspector to conduct further enquiries who reported that average monthly Rs.200/- were charged for each connection. The AO found that the assessee has reported only meager receipts from the above subscriptions of cable connection.

5. Based upon the figures received from the entertainment tax department the AO computed gross receipts from cable business at Rs.6,04,80,000/- and after deduction receipt shown in the original return of Rs.992500/- the estimated gross receipts was taken at Rs.59487500/- and the average profit rate @ 8% and assessed income at Rs.4759000/- and after reducing the declared income of Rs.91350/- addition of Rs. 4759000/- was made.

6. The most pertinent fact which has been ignored by the AO while conducting further enquiries is that the assessee had closed his business on 18.05.2005 as per the letter given to the entertainment office the enquiries were made somewhere in 2009. It would be inappropriate to accept that the Inspector / Entertainment department tax department gave accurate figures 4 years after the closer of the office and further find that in the immediately preceding year the subscription receipts are much lesser than estimated by the AO. It appears the AO has completely ignored the receipts of earlier years in the same business. Since correct facts are not emanating from the records, in the interest of justice and fair play I deem it fit to restore the quarrel to the files of the AO. The AO is directed to decide the issue afresh after considering the past history of the assessee and after calling past records from the Entertainment tax department. Needless to mention the AO shall give adequate opportunity of being heard to the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purpose.

8. Decision announced in the open court in the presence of both the parties on 23.01.2023.

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

NEHA

Date:- .01.2023

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI