

**IN THE INCOME TAX APPELLATE TRIBUNAL
 [DELHI BENCH: 'B' NEW DELHI]**

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 679/DEL/2019 (A.Y. 2010-11)

First Citizen Technologies Ltd., A-61, Kamla Nagar, New Delhi – 110 007. PAN No. AAACF8709J	Vs.	ACIT, Circle : 9 (1) New Delhi.
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AND

I.T.A. No. 698/DEL/2020 (A.Y. 2010-11)

First Citizen Technologies Ltd., 108, Priyanka Tower, First Floor, Basai Dara Pur, New Delhi – 110 015. PAN No. AAACF8709J (APPELLANT)	Vs.	ACIT, Circle : 9 (1) New Delhi. (RESPONDENT)
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Assessee by :	N o n e ;
Department by:	Shri T. James Singson, [CIT] - D. R.;

Date of Hearing	09.02.2023
Date of Pronouncement	14.02.2023

ORDER**PER YOGESH KUMAR U.S., JM**

These two appeals are filed by the assessee against the order dated 20.12.2018 and 06.12.2019 respectively of the Ld. Commissioner of Income Tax (Appeals)-3, New Delhi, and CIT (Appeals) Delhi-13, both for assessment year 2010-11.

I.T.A. No. 679/DEL/2019 :

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

“1. That on the facts and in the circumstances of the case and in law, learned CIT -A erred in affirming the order of Ld AO in TOTO.

2. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not deleting the addition made by Ld AO on account of deposit to the tune of (Rs.91,27,20,637) pertaining to other companies' bank accounts and on the basis of bank statements of other companies. It is pertinent here to mention that same type of more one bank account in the same bank of a customer is not possible. The assessee has obtained the details of the other companies whose deposit in their bank statements are wrongly added as income of the assessee by the Ld AO.

3. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not deleting the addition made by Ld AO on account of unexplained share application money of (Rs.2,70,04,261/-) u/s 68 of the Income Tax Act, 1961. The share

application money were accepted are genuine and as per law, the details of the same were produced earlier are available with the assessee and can be produced again when required.

4. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not deleting the addition made by Ld AO on account of increase in current liabilities of (Rs.2,20,50,778/-) u/s 68 of the Income Tax Act, 1961, however increase in current liabilities are genuine and due to increase in business in comparison to the previous year. The details of the same were supplied and can be produced once more, if required.*

5. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not deleting the addition made by Ld AO on account of 20% of purchase i.e. (Rs.5,59,94,996/-) as unexplained amount, however all the purchase are genuine and related to the sales. The details of every purchase are available with the assessee and can be produced if required. It is explained earlier that business had increased.*

6. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not deleting the addition made by Ld AO on account of 20% of administrative and other expenses i.e. (Rs.11,27,052/-) as unexplained amount. This was fully supported and increase in such expenditure was due to increase in business. The administrative and other expenses are genuine in nature and the details of the same are available with the assessee and can be produced if required.*

7. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not adjudicating the specific grounds taken in appeal (Form No. 35) but merely reproduced in his order. The proper opportunity of being heard was not given to the assessee as the notice was not served properly to the assessee and also learned CIT-A did not consider the details produced by the AR of the assessee during the course of hearing of appeal.”

3. Brief facts of the case are that, the assessee filed return declaring total income of Rs.39,21,961/-. The case of the assessee for the Assessment Year 2010-11 was reopened, the assessment order came to be passed u/s 147/Section 144 of the Act by computing the income of the assessee at Rs. 116,22,87,178/- by way of assessment order dated 27/12/2017.

4. Aggrieved by the assessment order dated 27/12/2017, the assessee has preferred an appeal before the Ld.CIT (A). The Ld.CIT(A) has issued several notices, but the assessee failed to appear before the Ld.CIT(A) and failed put forth his case effectively. Therefore, the Ld.CIT(A) has dismissed the appeal on 30/01/2018 for non prosecution by relying on the ratio laid down in the case of CIT Vs. Multiplan Pvt. Ltd. Reported in 38 ITD 320 (Delhi).

5. Aggrieved by the order of the Ld.CIT (A), the present appeal is filed by the assessee on the grounds mentioned above.

6. None appeared or the assessee, the notices issued by the registry to the registered addressed of the assessee returned with an endorsement 'no such

person'. By considering the facts and circumstances of the case, we deem it fit to decide the appeal after hearing the Ld. DR and on verification of material on record.

7. We have heard the Ld. DR perused the material available on record and gave our thoughtful consideration. It is found that the Ld.CIT(A) had issued several notices to the assessee and gave sufficient opportunities to the assessee to put forth his case before the Ld.CIT(A), but even after providing sufficient opportunities neither the assessee nor the representative of the assessee have cooperated with the Ld.CIT(A) in the appellate proceedings. Further it is found that the Ld. CIT(A) has not decide the appeal merit and dismissed the appeal filed by the assessee for default by relying on the ratio laid down in the case of CIT Vs. Multiplan Pvt. Ltd. reported in 38 ITD (Delhi). The ratio relied by the CIT(A) is of Multiplan India Pvt. Ltd. (Supra) is no more a good law and it is settled position of law that the Revenue Authority and the even the Tribunal has to decide the appeal on merit and not suppose to dismiss the appeal for non prosecution without deciding the appeal on merit. Therefore, we deem it fit to remand the matter to the file of Ld.CIT(A) with a direction to decide the matter on merit. Accordingly, we direct the Ld.CIT(A) to decide the appeal on merit after giving opportunity of being heard to the assessee in accordance with law. Thus, we partly allow the Ground No.7 of the Assessee.

8. Since, we have remanded the matter to the file of Ld.CIT(A) for de-novo consideration, the Ground No. 1 to 6 which are on merit are not adjudicated.

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

I.T.A. No. 698/DEL/2020 :

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

“1. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in affirming the order of Ld AO in TOTO, by applying the essence of the section 114(g) of the Indian Evidence Act on presumption basis, which is rebuttable. Presumption cannot be drawn from other presumption, and also a presumption is not an evidence or proof per se. However the fact is that the documentary evidences were acknowledged by the Ld CIT-A through e-proceeding vide ack. no. 19091911635352, vide Documents Id- ITBA/APLIS/APL_1/2019-20/1017766876(1) dated 19-09-2019, but were ignored by the Ld CIT-A, and ordered in an unjust manner.

2. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not deleting the addition made by Ld AO on account of deposit to the tune of (Rs.91,27,20,637) pertaining to other companies' bank accounts and on the basis of bank statements of other companies. It is pertinent here to mention that same type of more than one bank account in the same bank of a customer cannot be maintained. The assessee

has obtained the details of the other companies whose deposit in their bank statements are wrongly added as income of the assessee by the Ld Assessing Officer.

3. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not deleting the addition made by Ld AO on account of unexplained share application money of (Rs.2,70,04,261) u/s 68 of the Income Tax Act, 1961. The share application money were accepted are genuine and as per law, the details of the same were produced earlier are available with the assessee and can be produced again when required.*

4. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not deleting the addition made by Ld AO on account of increase in current liabilities of (Rs.2,20,50,778) u/s 68 of the Income Tax Act, 1961, however increase in current liabilities are genuine and due to increase in business in comparison to the previous year. The details of the same were supplied and can be produced once more, if required.*

5. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not deleting the addition made by Ld AO on account of 20% of purchase i.e. (Rs.5,59,94,996) as unexplained amount, however all the purchase are genuine and related to the sales. The details of every purchase are available with the assessee and can be produced if required. It is explained earlier that business had increased.*

6. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not deleting the addition made by Ld*

AO on account of 20% of administrative & other expenses i.e. (Rs.11,27,052) as unexplained amount. This was fully supported and increase in such expenditure was due to increase in business. The administrative & other expenses are genuine in nature and the details of the same are available with the assessee and can be produced if required.

7. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not adjudicating the specific grounds taken in appeal (Form No.35) but merely reproduced the order of the Ld. AO. The proper opportunity of being heard was not given to the assessee as the notice was not served properly to the assessee and also learned CIT-A did not consider the details produced by the AR of the assessee during the course of hearing of appeal.”

11. None appeared or the assessee, the notices issued by the registry to the registered addressed of the assessee returned with an endorsement 'no such person'. By considering the facts and circumstances of the case, we deem it fit to decide the appeal after hearing the Ld. DR and on verification of material on record.

12. It is found that the assessee has also not appeared before the Ld.CIT (A) in the appellate proceedings and the appeal has been dismissed the ex-parte. As per Ground No. 7 the assessee is aggrieved by the action of the Ld.CIT(A) in dismissing the appeal for non prosecution without affording opportunity of heard.

13. By considering the facts that we have remanded the quantum appeal to the Ld.CIT(A) in ITA No. 679/Del/2019 and also considering the fact that the Ld.CIT(A) has adjudicated the appeal in the absence of the assessee, we deem it fit to remand the penalty appeal also to the file of Ld.CIT(A) for de-novo verification.

14. In the result the appeal of the assessee is partly allowed for statistical purpose with a direction to the Ld.CIT(A) to decide the matter on merit in accordance with law after providing opportunity of being heard to the assessee.

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

Order pronounced in the open court on : **14/02/2023.**

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER
Dated : 14 /02/2023

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

MEHTA/R.N, Sr. PS

Copy forwarded to :-

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

ASSISTANT REGISTRAR
ITAT NEW DELHI