

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE Dr. B.B. R. Kumar, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No. 1614/Del/2020
(Assessment Year: 2007-08)

Avantha Reality Ltd,
3rd Floor, Vatika First India
Place, MG Road, Gurgaon,
Haryana 122002
(Appellant)
PAN: AAACJ8030A

Vs. DCIT,
Circle-17(1),
New Delhi

(Respondent)

Assessee by : Sh. Upvan Gupta, Adv
Revenue by: Sh. P. Praveen Sidharth, CIT DR

Date of Hearing 28/02/2023
Date of pronouncement 23/03/2023

O R D E R

PER YOGESH KUMAR US, J. M.:

This appeal is filed by the assessee against the order dated 30.07.2020 of the ld. Commissioner of Income Tax (Appeals) -11, New Delhi (hereinafter referred to CIT (Appeals) for assessment year 2007-08.

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

“1.1 That on the facts and in the circumstances of the case, the Commissioner of Income-tax (Appeals) 11, New Delhi [‘CIT(A)'] grossly erred in passing the impugned appellate order in complete contravention of the principles of natural justice, i.e., without providing a reasonable and proper opportunity of being heard to the assessee.

1.1 That on the facts and in the circumstances of the case, the CIT(A) grossly erred in passing the impugned appellate order without appreciating that, on the date fixed for hearing, i.e., 26.03.2020, a country wide lockdown imposed by the Government of India was in operation and the assessee was sufficiently prevented from appearing for the said hearing before the CIT(A).

1.2 That on the facts and in the circumstances of the case, the CIT(A) grossly erred in passing the impugned appellate order during the period of COVID-19 pandemic hugely prevailing in Delhi NCR area, i.e., on 30.07.2020 and without giving a physical/ virtual/ online opportunity of being heard to the assessee.

1.3 That on the facts and in the circumstances of the case, the CIT(A) grossly erred in passing the impugned appellate order without appreciating that the assessee, for reasons beyond its control, was unable to avail the opportunity of appearing and representing the case on 26.03.2020 and subsequently, no other opportunity of being heard was provided to the assessee. 1.4 That on the facts and in the circumstances of the case, the CIT(A) grossly erred in passing the impugned appellate order without appreciating that the buildings of Income-tax Department in New Delhi were not open for general public/ assessee/ authorized representative from 25.03.2020 to 31.08.2020.

1.5 That on the facts and in the circumstances of the case, the CIT(A) grossly erred in passing the impugned appellate order without appreciating that the corporate office of assessee was closed from 25.03.2020 to 31.08.2020 due to COVID-19 pandemic situation prevailing in Delhi NCR area and the tax team of assessee was not available in office at the relevant time.

2. That on the facts and in the circumstances of the case, the CIT(A) grossly erred in passing the impugned appellate order in total contravention of the principles of judicial comity and legal propriety, by overruling the appellate order passed by preceding CIT(A) in first round of appellate proceedings in the present matter, based on exactly identical facts and circumstances.

2.1 That on the facts and in the circumstances of the case, the CIT(A) grossly erred in passing the impugned appellate order without appreciating that as per judicial principle, an order passed by an Authority can be overruled by a higher Authority/ Court only and not by an equivalent Authority/ Court, if facts/ circumstances prevailing in the matter are identical and consistent.

2.2 That on the facts and in the circumstances of the case, the CIT(A) grossly erred in passing the impugned appellate order without appreciating that the same tantamounted to review of his own previous appellate order (passed by the preceding officer), which is not permissible in law, since all relevant facts were already available on record and no new fact was brought into existence by assessee/ assessing officer during the second round of appellate proceedings.

3. That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in passing the impugned appellate

order in a non-speaking manner, without appreciating the submissions filed by the assessee and facts available on record.

3.1 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in passing the impugned appellate order and confirming the action of the assessing officer in making various additions/ disallowances in a mechanical/ arbitrary manner, without there being any basis for doing so.

4. That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the action of the assessing officer in making an addition of INR 5,00,00,000 on account of share application money, without appreciating that the same was properly explained and recorded in books of accounts.

4.1 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition without appreciating that the assessee vide additional evidences had established identity, genuineness and creditworthiness of the share applicant in a proper and sufficient manner.

4.2 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition without appreciating that the assessee had allotted 4% redeemable non-cumulative preference shares to the share applicant on 30.06.2007 against the aforesaid share application money.

4.3 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition without appreciating that the transaction under consideration became neutral/ ineffective in nature subsequently, since, the assessee company got merged into share applicant company only and accordingly, harsh provisions of section 68 of the Income-tax Act, 1961 (the Act) were not warranted in the present matter.

4.4 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition by totally disregarding the submissions and supporting documents submitted by assessee.

4.5 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition in a non-speaking manner without providing any reasons for doing so.

5. That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the action of the assessing officer in making an addition of INR 5,00,00,000 on account of unpaid purchase price of 7% redeemable non-cumulative preference shares of M/s Solaris Holdings Limited purchased by assessee from M/s ASA Agencies Private Limited.

5.1 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition without appreciating that the amount of unpaid purchase price of shares under consideration was properly explained and recorded in books of accounts.

5.2 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition without appreciating that execution of the above-mentioned transaction is clearly evident from share certificates, confirmation in this regard provided by the seller and ledger accounts of parties appearing in books of accounts of both the parties.

5.3 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition without appreciating that the above-mentioned transaction of unpaid purchase price on account of transfer of shares was inadvertently disclosed as loan/ deposits in audit report for the relevant assessment year.

5.4 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition by totally disregarding the submissions and supporting documents submitted by assessee.

5.5 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition in a non-speaking manner without providing any reasons for doing so.

6. That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the action of the assessing officer in making an addition of INR 1,00,00,000 on account of money received from M/s Bilt Paper Holdings Limited on 13.12.2006 through proper banking channels, without appreciating that the same was properly explained and recorded in books of accounts.

6.1 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition without appreciating that the above-mentioned amount of money received was duly returned back by assessee to M/s Bilt Paper Holdings Limited on 01.05.2007 through proper banking channels.

6.2 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition by rejecting the additional evidences submitted by assessee under Rule 46A of the Income-tax Rules, 1962 ('the Rules'), without providing any reasons for doing so.

6.3 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition by rejecting the additional evidences submitted by assessee without appreciating that assessment proceedings for the relevant assessment year were concluded by the assessing officer at the fag end of limitation period and assessee was sufficiently prevented to produce the documents submitted as additional evidences during the course of the assessment proceedings for the relevant assessment year.

6.4 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition by totally disregarding the submissions and supporting documents submitted by assessee.

6.5 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition in a non-speaking manner without providing any reasons for doing so.

7. That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the action of the assessing officer in making an addition of INR 84,45,205 on account of dividend received by assessee as unexplained cash credits, without appreciating that dividend income is exempt from tax under the provisions of section 10(34) of the Act.

7.1 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition without appreciating that the fact of payment of aforesaid amount of dividend to assessee has been confirmed by the payer companies alongwith submission of copy of challans evidencing payment of dividend distribution tax on such dividends under the provisions of section 1150 of the Act.

7.2 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition without appreciating that the fact of receipt of aforesaid amount of dividend by assessee is properly explained and recorded in books of accounts, which were duly analyzed and verified by statutory auditors of the assessee, without reporting any adverse comments in respect thereof.

7.3 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition by totally disregarding the submissions and supporting documents submitted by assessee.

7.4 That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in confirming the aforesaid addition in

a non-speaking manner without providing any reasons for doing so.”

3. Brief facts of the case are that the assessee filed return of income declaring total income of Rs. 12,89,809/-. The assessment order came to be passed on 31.12.2009 by computing the income of the assessee at Rs. 11,97,35,014/- .

4. Aggrieved by the assessment order dated 31.12.2009 the assessee preferred an appeal before the Id CIT(A) and the CIT (A) vide order dated 30.07.2020 dismissed the appeal filed by the assessee. As against the order of the Id CIT(A) dated 30.07.2020 the assessee has preferred the present appeal on the ground mentioned above.

5. We have heard the parties perused the material available on record. As per the Ground No.1 and its sub grounds, the assessee is aggrieved by the order passed by the Id CIT(A) which is passed in violation of principle of natural justice, therefore, the order of the Id CIT(A) deserves to be set aside. The Assessee has also raised the other grounds on the merit as well.

6. On the other hand the Id DR relied on the order of the lower authorities.

7. It is not in dispute that the order impugned was passed on 30.07.2020. The hearing for the above appeal was fixed on 26.03.2020 during which the period country-wide lockdown was imposed by the Govt. of India. As per the ground No.1 and its sub grounds of appeal, the assessee has specifically pleaded that the Id CIT(A) has not given physical/ virtual or online opportunity of being heard to the assessee. Considering the above facts and circumstances of the case, without expressing any view on the merit of the case, we deem it fit to remand the matter to the file of Id CIT(A) for de novo adjudication of all the issues involved in the Appeal. Accordingly, we allow ground No. 1 of the assessee's appeal

by directing the 1d CIT(A) to dispose off the appeal afresh after providing opportunity of being heard to the assessee.

8. Since, we have remanded the issue to the file of the 1d CIT(A) to decide the case on merit, the other grounds on merit are not adjudicated and the same are left open to be decided by the CIT (A).

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

Order pronounced in the open court on 23/03/2023.

-Sd/-
(Dr. B.B. R. KUMAR)
US) ACCOUNTANT MEMBER

-Sd/-
(YOGESH KUMAR)
JUDICIAL MEMBER

Dated:23/03/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi