

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

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

ITA No.5979/Del/2018  
Assessment Year: 2013-14

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| <b>Jindal Infosolutions Ltd.<br/>2<sup>nd</sup> Floor, Jindal Centre,<br/>Plot No.2, Sector-32,<br/>Gurgaon-122001<br/>PAN No.AACCN7616C<br/><b>(APPELLANT)</b></b> | <b>Vs</b> | <b>DCIT<br/>Circle -13 (1)<br/>New Delhi<br/><br/><b>(RESPONDENT)</b></b> |
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| Appellant by  | Sh. Salil Kapoor, Advocate<br>Sh. Sumit Lal Chandani, Advocate |
| Respondent by | Sh. Anuj Garg, Sr DR   |

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| Date of hearing:       | 28/03/2023 |
| Date of Pronouncement: | 28/03/2023 |

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the assessee is preferred against the order of the CIT(A)-36, New Delhi dated 29.06.2018 pertaining to A.Y.2013-14.

2. The grievance of the assessee read as under :-

1. *“That the disallowance/addition made by Assessing Officer vide assessment order dated 31.03.2016 passed under section 143(3) of the Income Tax Act, 1961 and upheld by CIT(A) are illegal, bad in law and without jurisdiction.*

2. *That the total income assessed by the Assessing Officer amounting to Rs 2,95,35,700/- as against the income declared by the assessee of Rs. 1,64,86,630 is*

*illegal and bad in law.*

3. *That the CIT acted in contravention to the principles of Natural Justice by /passing an ex-parte order, without providing the Appellant a reasonable opportunity of being heard.*

4. *That the CIT(A) has grossly erred on facts and in law in confirming the addition made by the AO amounting to Rs. 45,00,000 being share capital by invoking the provisions of 68 of the Act.*

5. *That the CIT has grossly erred on facts and circumstances of the case and in law in upholding the disallowance of expenditure of Rs. 22,75,000/- incurred on account of Client Support & Warranties expenses.*

6. *That the CIT has erred in law in not appreciating that TDS provisions are not applicable in the case of provision made in the books of account in respect to client support service and their claim for warranty. Accordingly, disallowance made u/s 40(a)(ia) is illegal and bad in law.*

7. *That Assessing Officer has erred in making adhoc disallowance of 20% of Rs. 10,65,366/- on account of telephone expenses claimed. The addition made is arbitrary, unjustified, illegal and uncalled for.*

8. *That the CIT erred on facts and in law in upholding the Addition of Rs 60,60,995/- to the total income as per the provisions of section 41(1) of the Act.*

9. *That on the facts and in- the circumstances of the case, and on proper interpretation of Section 41(1) of the Act, 1961, the CIT(A) was right in law in holding that the assessee's liability to pay the creditors had not ceased and therefore, the income tax authorities were not justified in making an addition of Rs. 60,60,995/.*

10. *That on the facts and in the circumstances of the case, AO has erred in Disallowing the credit of TDS amounting to 1,35,31,396/- without considering the actual facts of the case and hence it is bad in law.*

11. *That the evidence filed and materials available on record have not been properly construed and judiciously interpreted, hence the addition/disallowance made are uncalled for.*

12. *The action of assessing officer in making assessment u/s 143(3) of the Income tax Act 1961 without giving proper opportunity of being heard is unjust illegal, arbitrary & against the fact & circumstances of the case.*

13. *That the observation and the additions made are unjust, illegal, arbitrary, bad in law, highly excessive and based on surmise conjecture.*

14. *That interest U/s 234A, 234B, 234D & 244A of the Income Tax Act, 1961 has been wrongly and illegally charged and has been wrongly worked out.*

3. At the very outset the Counsel for the assessee referring to ground No.3 stated that the CIT(A) has framed the appellate order exparte which is in gross violation of the principal of natural justice. In support of his contention the Counsel referred to the affidavit placed on record and pointed out no proper notice was served before passing the appellate order.

4. Per contra the DR could not rebut the averments made in the affidavit.

5. We have carefully considered the orders of the authorities below. The undisputed fact is that the first appellate authority has framed the appellate order exparte. The facts relating to the service of notice culminating into the appellate order can be understood from the contents of the affidavit on record which reads as under :-

*“Affidavit of Mr. Sarat Kishore Panda, son of Sh.UpendraNath Panda, aged 49 years, resident of A-12, Sector-23, Saman, Vihar Appt., Plot No. 9, Dwarka, New Delhi 110075do hereby solemnly swear and affirm as under :-*

1. *“That I am the Director of Jindal Infosolutions Ltd. The Company had filed an appeal before Commissioner of Income Tax (Appeals) 36 for the Assessment Year 2013-14.*
2. *That notice dated 16.05.2017 was received from the Office of CIT(A), fixing the case for hearing of the appeal on 12.06.2017 for the Assessment Year 2013-14.*
3. *That company had filed a letter of adjournment dated 12.06.2017 before the office of CIT(A)requesting for some time.*
4. *Notice dated 13.06.2018 was received from the Office of*

*CIT(A), fixing the case for 21.06.2018. The notice was received in the office of Jindal Infosolutions Ltd. on 21.06.2018 at 6:30 P.M. The offices were closed by that time.*

5. *That on 25.06.2018, we enquired from the offices of CIT(A) 36, Aayakar Bhawan, District Centre, Laxmi Nagar, Delhi about the next date of hearing. We were told that a fresh notice will be issued today, fixing the new date.*

6. *That the notice dated 25.06.2018, fixing the case for 29.06.2018 was received on 11.07.2018. Whereas the order was passed by the CIT(A) 36 ex-exparte on 29.06.2018.”*

6. In the light of the above we are of the considered view that there is a denial of natural justice and, therefore, the assessee deserves a second inning from the FAA. Therefore, in the interest of justice and fair play we restore this appeal to the files of the CIT(A). The CIT(A) is directed to decide the appeal afresh after affording a reasonable and sufficient 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 on 28.03.2023.

Sd/-

**[ANUBHAV SHARMA]**  
**JUDICIAL MEMBER**

Dated: .03.2023

\*Neha\*

Sd/-

**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**