

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.1018/Del/2019
Assessment Year: 2013-14

Suruchi Jindal 48, J K. Apartments A-3 Block, Paschim Vihar, New Delhi PAN No.ADPPJ2303P (APPELLANT)	Vs	ITO Ward- 41 (1) New Delhi (RESPONDENT)
---	-----------	---

ITA No.1019/Del/2019
Assessment Year: 2014-15

Suruchi Jindal 48, J K. Apartments A-3 Block, Paschim Vihar, New Delhi PAN No.ADPPJ2303P (APPELLANT)	Vs	ITO Ward- 41 (1) New Delhi (RESPONDENT)
---	-----------	---

Appellant by	Sh. Dinesh Mohan, Advocate
Respondent by	Ms. Yamini Goutam, Sr DR

Date of hearing:	08/05/2023
Date of Pronouncement:	08/05/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.1081/Del/2019 and 1019/Del/2019 are two separate appeals by the assessee preferred against the two

separate orders of the CIT(A)-14 dated 19.12.2018 and 03.12.2018 pertaining to A.Y.2013-14 and 2014-15 respectively.

2. Since common issues are involved in both these appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The grievance in A.Y.2013-14 is as under :-

1. *That the order of both the Learned Lower Authority are wrong in law and on facts of the case.*

2. *That application of G P Rate @ 2% is against the declared G P Rate is abinitio illegal and arbitrary on the facts of the case.*

a) *That the premises of the proprietor was sealed by the VAT authority on 19.08.2015 due to non production of current books of accounts and the case under assessment was for Financial Year 2012-2013 pertains to Asst Year 2013.2014 and all the books prior to current year i.e. 2015-16 were lying in the premises. Which were not obtained from the VAT authorities therefore the petitioner was prevented by sufficient cause for not presenting the books at the time of assessment.*

b) *That complete audit report along with annexures were filed at the time of assessment.*

c) *That the basis of application of G P Rate @ 2% was not given in the AO therefore it is against the natural justice and on facts of the case.*

3. *That the disallowance of job work is illegal an arbitrary as it was clarified as the assessment stage that provision of deduction of TDS is not applicable in the case as the single payment was below 75000/-.*

4. *That addition on account of disallowance of expenses is un warranted as very reasonable and nominal expenses had been claimed in regard to the huge turnover and application of estimated G P Rated.*

5. *That the paper book will be filed to justify the contention against the addition and rejection of appeal.*

4. The grievance in A.Y.2014-15 is as under :-

1. *That the order of both the Learned Lower Authority are wrong in law and on facts of the case.*

2. *That application of G P Rate @ 2% is against the declared G P Rate is abinitio illegal and arbitrary on the facts of the case.*

a) *That the premises of the proprietor was sealed by the VAT authority on 19.08.2015 due to non production of current books of accounts and the case under assessment was for Financial Year 2013-2014 pertains to Asst Year 2014.2015 and all the books prior to current year i.e. 2015-16 were lying in the premises. Which were not obtained from the VAT authorities therefore the petitioner was prevented by sufficient cause for not presenting the books at the time of assessment.*

b) *That complete audit report along with annexures were filed at the time of assessment.*

c) *That the basis of application of G P Rate @ 2% was not given in the AO therefore it is against the natural justice and on facts of the case.*

3. *That the disallowance of job work is illegal an arbitrary as it was clarified as the assessment stage that provision of deduction of TDS is not applicable in the case as the single payment was below 75000/-.*

5. Briefly stated the facts of the case are that in both the assessment years under consideration the assessment has been framed u/s.143(3)/144 of the Act.

6. Before us the Counsel for the assessee pleaded that since the books of accounts were under seizure by the DVAT

Department Delhi, therefore, the assessee could not produce the books of accounts before the AO during the course of the assessment proceedings and, therefore, could not defend its financial statements.

7. The DR on her rebuttal stated that the books were not even produced before the Vat authorities also, therefore, the arguments of the Counsel do not hold any water.

8. We have carefully perused the orders of the authorities below. The basis of the assessment is that when the assessee was asked to produce the books of accounts it was submitted in its reply that the books of accounts cannot be produced due to the reasons that the books of accounts has been submitted to DVAT department. The assessee also submitted a copy of the public notice for sealing of premises issued by the DVAT and Enforcement Department Delhi. These facts are coming out of the assessment order itself, therefore, we are convinced that the assessee was prevented by reasonable and sufficient cause for not producing the books of accounts during the assessment proceedings as well as the appellate proceedings, therefore, in the interest of justice and fair play we deem it fit to restore both the appeals to the files of the AO. The AO is directed to examine the books of accounts and decide the issue afresh after affording a reasonable and sufficient opportunity of being heard to the assessee and the assessee is directed to produce the books of accounts for verification.

9. In the result, both the appeals are allowed for statistical purpose.

10. Decision announced in the open court on 08.05.2023.

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Dated: .05.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar
ITAT, New Delhi