

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 486/Del/2019
Asstt. Year: 2014-15

TSP Engineers Pvt. Ltd. F-41, 1 st Floor, Gali No. 8, Radhey Puri, Krishna Nagar, New Delhi PAN AADCT5691A	Vs.	ITO, Ward-25(4) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri W A Khan, Adv.
Department by :	Shri Amit Shukla, Sr. DR
Date of Hearing	06.04.2023
Date of pronouncement	16.05.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal by the assessee is directed against the order dated 08.11.2018 of the Ld. Commissioner of Income Tax (Appeals) - 9, New Delhi ("**CIT(A)**") pertaining to the Assessment Year ("**AY**") 2014-15.

2. The grounds raised by the assessee are as under:-

- “1. That Id commissioner of income tax (appeals)- 9 has not appreciated that the orders of Id A.O. are highly arbitrary, illegal & against the facts of the case.
2. That Id commissioner of income tax (appeals)- 09 has not appreciated that Id Income tax officer has grossly erred in making an addition of Rs.1050500/- on flimsy grounds without providing sufficient opportunity and without obtaining the confirmation from the lender although the facts were clarified and proved that the said amount was received through the directors imprest account out of companies money which was given through banking channel to the director for payment for the purchase of office.
3. That Id commissioner of income tax (appeals)- 09 has not appreciated that Id Income tax officer has grossly erred in making an addition of Rs.1447140/- on flimsy grounds without providing sufficient

opportunity and without obtaining/accepting the confirmation from the lender M/S Telecom Service Provider.

4. *That Id commissioner of income tax (appeals) - 09 has not appreciated that Id appellent has filed the required confirmations and records and are available on record.*
5. *That Id commissioner of income tax (appeals)- 09 has not appreciated that all the additions made by the A.O. are bad in law, illegal and against the principal of natural justice.*
6. *That appellent craves to leave to add, alter, omit to/from the grounds of appeal at the time of hearing.*
7. ***Prayer:-*** *In view of the above mentioned facts and circumstances of the case, it is most respectfully prayed that please quashed the orders of Id Income tax officer. Or alternatively the addition of Rs 2497640/- be deleted or may pass such orders as your good self consider fit and proper on the interest of natural justice.”*

3. Briefly stated the facts are that the assessee is a company engaged in the business as a Contractor taking contracts of all types, e.g. Civil & Construction Contract, Electrical Contracts and Painting Contracts. For AY 2014-15 it filed its return on 26.11.2014 declaring income of Rs. 18,89,184/-. The case was processed under section 143(1) of the Income Tax Act, 1961 (**the “Act”**). Subsequently, the case was selected for scrutiny under CASS. Statutory notices under section 143(2) and 142(1) of the Act were duly served upon the assessee. In response the assessee submitted requisite details and information which were placed on record. The Ld. Assessing Officer (**“AO”**) completed the assessment on 30.12.2016 on total income of Rs. 1,28,64,600/- including therein the addition of Rs. 10,50,500/- under section 68; addition of Rs. 5,00,000/- being loan received by the assessee from one of its Directors Shri Sumit Rastogi; addition of Rs. 26,500/- being amount received from Shri Rajesh and Shri Yogesh; disallowance of project expenses of Rs. 78,44,531/-; disallowance of Rs. 1,06,742/- under section 40(a)(ia) and addition of Rs. 14,47,140/- being balance of M/s. Telecom Service Provider.

4. The assessee challenged the above additions/disallowances before the Ld. CIT(A) who confirmed the addition of Rs. 10,50,500/- made by the Ld. AO under section 68; deleted the addition of Rs. 5,00,000/- and Rs. 26,500/-; deleted the disallowance of project expenses of Rs. 78,44,531/-

subject to verification of TDS returns; confirmed the disallowance of Rs. 1,06,742/- made under section 40(a)(ia) and addition of Rs. 14,47,140/-.

5. The assessee is in appeal before the Tribunal against confirmation by the Ld. CIT(A) of addition of Rs. 10,50,500/- under section 68 and confirmation of addition of Rs. 14,47,140/- being balance of M/s. Telecom Service Provider and all the six grounds of appeal relate thereto.

6. We have heard the Ld. Representatives of the parties, considered their arguments and perused the records. The facts relating to the addition of Rs. 10,50,500/- under section 68 of the Act are that the Ld. AO found credit entry of the said amount in the books of the assessee company. The assessee explained that it received the amount of Rs. 10,50,500/- as loan from Shri Sunil Yadav on 17.05.2013. However, in the confirmation of account filed before the Ld. AO, the said amount had not been reflected. The Ld. AO, therefore, treated the said amount as undisclosed income of the assessee and added the same to the income of the assessee under section 68 of the Act.

6.1 Before the Ld. CIT(A), the assessee submitted that the said amount was reflected in the imprest account of the Director, Shri Sunil Yadav who has received the said amount from the company by cheque on 17.05.2013 and after withdrawing the said amount from his bank paid cash for the purchase of the company's office. The explanation of the assessee for not reflecting the said amount in the confirmation of account was that the company was maintaining imprest account of the Director and the said transaction was done through imprest account of the Director.

6.2 The explanation of the assessee was not acceptable to the Ld. CIT(A) who observed that it is not verifiable as to how the cash withdrawn by the Director is same amount claimed to have been made as payment by the assessee company for purchase of asset. For the reason aforesaid, the Ld.

CIT(A) confirmed the impugned addition against which the assessee is before us.

6.3 The only ground on which the Ld. AO made the impugned addition is that in the confirmation of account filed by the assessee before him the said amount has not been reflected. The explanation of the assessee offered before the Ld. CIT(A) was that the transaction was made through imprest account of Director and this was the reason why the said amount was not appearing in the account furnished during assessment proceedings. The assessee furnished copy of imprest account of Director appearing in the books of account of the assessee company, wherein, the Ld. CIT(A) noted that the assessee had indeed paid the amount to its Director. The Ld. CIT(A) further observed that the fact that the assessee company paid the said amount to its Director which is substantiated from the ledger account furnished by the assessee wherein it clearly appeared that the assessee company had paid the amount vide a cheque to its Director.

6.4 On the face of the aforesaid findings recorded by the Ld. CIT(A), we are of the opinion that in the interest of justice and fair play, the matter needs to be remanded back to the file of the Ld. AO to decide the issue afresh after giving reasonable opportunity of hearing to the assessee.

7. The facts relating to addition of Rs. 14,47,140/- are that the Ld. AO found that the assessee had obtained loan from M/s. Telecom Service Provider and from the copy of confirmation of account noticed that an amount of Rs. 14,47,140/- was the balance outstanding as on 31st March, 2014. Since the confirmation of the lender did not have his address, PAN etc., the Ld. AO required the assessee to submit explanation. The assessee filed reply on 27.12.2016 submitting copy of ICICI bank statement of the assessee company for the month of September, 2014 and claimed that the assessee company had repaid the loan. The Ld. AO observed from the said statement that on 30.09.2014 vide cheque No. 596469 Rs. 10,00,000/- was transferred to Shri Sumit account and the assessee deliberately handwritten

the name of M/s. Telecom Service Provider by cutting the name of Shri Sumit. He, therefore, disbelieved the version of the assessee and for lack of creditworthiness and genuineness of transaction, the Ld. AO made the impugned addition.

7.1 Before the Ld. CIT(A) the assessee did not submit any explanation and the stand taken by the Ld. AO remained uncontroverted. In the absence of any supporting evidence and documents filed by the assessee in support of the impugned outstanding balance of Rs. 14,47,140/-, the Ld. CIT(A) confirmed the impugned addition. However, we are of the opinion that the assessee must have an opportunity to present his case before the Ld. AO as it appears that explanation with regard to cutting the name of Shri Sumit and substituting it by the name of M/s. Telecom Service Provider was not sought from the assessee. The explanation of the assessee could not come on record. Additionally, the assessee has filed certain fresh documents before the Tribunal which the Ld. CIT(A)/AO have not perused. We, therefore, deem it fit to remit this issue also to the file of the Ld. AO to decide it afresh after allowing reasonable opportunity to the assessee to present his case on the point.

7.2 Accordingly, the issue of impugned addition of Rs. 14,47,140/- is also restored to the file of the Ld. AO for decision afresh.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16th May, 2023.

**sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 16/05/2023

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	