

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “G” DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A No.166/DEL/2019
Assessment Year 2013-14

SCB Steel P. Ltd. (earlier know as CBS Energy Systems P. Ltd.) New Delhi	v.	DCIT Circle-5(2) New Delhi
TAN/PAN: AADCC2468C		
(Appellant)		(Respondent)

Appellant by:	Shri Sachin Kumar, CA		
Respondent by:	Shri H.K. Choudhary, CIT-DR		
Date of hearing:	05	06	2023
Date of pronouncement:	13	06	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-II, New Delhi ('CIT(A)' in short) dated 11.05.2018 arising from the assessment order dated 29.03.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2013-14.

2. The grounds of appeal raised by the assessee read as under:

“1. The Id. Commissioner of Income Tax (Appeals) - 2, New Delhi [hereafter Id. CIT(A)] as well as the Id. Deputy Commissioner of Income Tax, Circle 5(2), New Delhi [hereafter Id. DCIT] failed to provide proper opportunity of hearing.

2. The Id. CIT(A) erred in rejecting the ground that the assessment

order passed by the Id. DCIT is null and void ab initio inter alia because the notice u/s. 143(2) of the Income Tax Act, 1961 (hereafter the Act) is invalid because (1) the said notice was issued by the Income Tax Officer (hereinafter the Id. ITO), who has no jurisdiction over the case; and without prejudice there is no order by the Competent Authority transferring the case from the ITO to the Id. DCIT; (2) the case was selected for scrutiny through CASS, which is in gross violation of provisions of section 143(2) of the Act; and without prejudice, the basis / reasons for selection of the case for scrutiny, are against the facts of the case.

3.1 The Id. CIT(A) erred in upholding addition of Rs. 8,22,60,418, which was made by the Id. DCIT on the sole ground that notices issued u/s. 133(6) were returned unserved, by estimating the GP at the rate of 5.60%.

3.2 The Id. CIT(A) failed to consider and decide all of the grounds of appeal.

4.1 The Id. CIT(A) erred in confirming the addition of Rs.1,78,31,800/- being cash deposit in Bank accounts, which was made by the Id. DCIT u/s.68 of the Act.

4.2 The Id. CIT(A) failed to consider and decide all of the grounds of appeal.

5. The Id. CIT(A) erred in confirming the disallowance of Rs.4,28,737/- being the expenditure on which the Tax at Source was not deducted.

6. The observations of the Id. CIT(A) as well as Id. DCIT are against the facts of the case.

7. The assessment order as well as the impugned order is against the facts of the case as well as law.”

3. Brief facts of the case are that the assessee filed return of income declaring loss of Rs.6,17,34,774/-. The return filed by the assessee was selected for scrutiny assessment. Certain additions were made in the course of the assessment towards alleged bogus purchases, unexplained cash deposits and addition on account of failure to deduct TDS on expenses incurred as per provisions of Section 40(a)(ia) of the Act. The income was assessed at a profit of Rs.3,87,86,181/-.

4. Aggrieved by the additions and disallowances made in the assessment order, the assessee filed appeal before the CIT(A).

5. A bare perusal of the order passed by the CIT(A) against, shows that the appeal has been dismissed primarily owing to the fact that assessee failed to appear before the first appellate authority to present its case in its perspective. The CIT(A) gathered strength from the judgments rendered by the Hon'ble Supreme Court in *CIT vs. B. N. Bhattacharya (1997) 118 ITR 461 (SC)* and proceeded *ex-parte* to confirm the action of the Assessing Officer.

6. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal. At the time of hearing, the ld. counsel at the threshold pointed out that the order of the CIT(A) is *ex-parte*. The ld. AR for the assessee also pointed out that the assessee has duly responded to each notices of the CIT(A) as tabulated in the appellate order itself and submitted that on four occasions the adjournment was granted and only on one occasion the CIT(A) has alleged non compliance and proceeded to dispose of the appeal *ex-parte* causing grave prejudice to the assessee. The ld. counsel thus assailed the action of the CIT(A) in passing the *ex-parte* order without giving adequate opportunity of being heard in clear violation of principles of natural justice.

7. As noted above, it is manifest from record that the order of the CIT(A) was passed *ex-parte* in the absence of assessee concerned and without any representation on behalf of the assessee. We also notice that the CIT(A) was constraint to dismiss the appeal of the assessee in the absence of any explanation or any evidence adduced on behalf of the assessee to rebut the findings given by the Assessing Officer. In the totality of circumstances and to prevent miscarriage of justice, we consider it expedient that the entire

matter is set aside and restore back to the file of the Assessing Officer for *denovo* adjudication of the appeal after affording proper opportunity of being heard to the assessee. The assessee is directed to fully co-operate in the proceedings before CIT(A) and shall be at liberty to present its case on all aspects and adduce such evidences and material as it may consider expedient in support of its appeal.

8. In view of the aforesaid discussion, the order of the CIT(A) is set aside and matter is restored back to the file of the CIT(A) for fresh adjudication in accordance with law.

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

Order pronounced in the open Court on 13/06/2023.

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: 13/06/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

Copy forwarded to:

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

Assistant Registrar