

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No.1448/DEL/2023
Assessment Year 2017-18

Jindal Rail Infrastructure Ltd. 28, Najafgarh Road, Post Office – Ramesh Nagar, New Delhi.	v.	DCIT, Circle-13(2), Delhi
TAN/PAN: AABCJ9516E		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Mr. Waseem Arshad, CIT (DR)		
Date of hearing:	14	09	2023
Date of pronouncement:	14	09	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), National Faceless Appeal Centre, Delhi [‘CIT(A)’ in short] dated 11.03.2023 arising from the assessment order dated 26.12.2019 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2017-18.

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

“1. On the facts and circumstances of the case Ld. CIT (A) has erred in dismissing appellant appeal in limine.

2. On the facts and circumstances of the case Ld. CIT (A) has erred in upholding illegal assessment, which was based on issues not specified in CASS.

3. *On the facts and circumstances of the case Ld. CIT (A) has erred in not appreciating that AO's action in calling indiscriminately entire vouchers of expenses amounting to Rs.180 crores and numbering in thousands by giving one day time, which was totally arbitrary and illegal act, and represent non grant of sufficient opportunity.*

4. *On the facts and circumstances of the case Ld. CIT (A) has erred in upholding the ad hoc addition of Rs.27,09,49,231/- made by AO in appellant assessable income, without pointing out any defect or inaccuracy in the bills of expenses submitted to him.*

5. *On the facts and circumstances of the case, Ld. CIT (A) has erred in not adjudicating the ground of incorrect grant of interest u/s. 244A."*

3. None appeared for the assessee. Accordingly, the matter was proceeded ex-parte.

4. On perusal of the case records, it was noted that an estimated addition @ 15% of the total expenses incurred at Rs.180.63 crore was added to the total income of the assessee on the grounds of unverifiable expenses by a very brief and cryptic order alleging part replies filed by the assessee. It is noticed that in the first appeal, the CIT(A) has dismissed the appeal of the assessee on the ground of non compliance. It is further noticed that a compliance period of 7 days were given for three different notices so issued in this regard. The assessee has responded on each occasion seeking a reasonable period for response. The CIT(A) rejected the request and passed an *ex-parte* order on the grounds of non prosecution.

5. On perusal of the order of the CIT(A), we straightaway notice that the CIT(A) has dismissed the appeal before it for want of prosecution and non compliance of statutory notices by a very cryptic order without any discussion on merit. The CIT(A) has declined to entertain the adjournment invoked the doctrine of

vigilantibus non dormientibus wherein its is ordained so-

- Law will help only those who are vigilant. Law will not assist those who are careless of his/her right. In order to claim one's right, she/he must be watchful of his/her right. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefits of law.
- A person who has kept mum during the statutory period cannot claim for the enforcement of right after the statutory limitation.

6. We straightway refer to Section 250(6) of the Act which enjoins that the CIT(A) shall state the points for determination before it and the decision shall be rendered on such points alongwith reasons for the decision. Thus, it is incumbent upon the CIT(A) to deal with the grounds on merits even in ex parte order. In view of Section 250(6) of the Act, the CIT(A) has no power to dismiss an appeal on account of non-prosecution. This view is also taken by the Hon'ble Bombay High Court in case of *CIT vs. Premkumar Arjundas Luthra HUF (2017) 291 CTR 614 (Bom.)*. A bare glance of the order of the CIT(A) shows that CIT(A) has not addressed itself on the various points placed for its determination at all and dismissed the appeal of assessee for default in nonappearance. Needless to say, the CIT(A) plays role of both adjudicating authority as well as appellate authority. Thus, the CIT(A) could not have shunned the appeal for non-compliance without addressing the issue on merits.

7. In the totality of the circumstances, we consider it just and expedient to restore the matter back to the CIT(A) in the larger interest of justice with a view to enable the assessee to avail

proper opportunity for disposal of appeal by the CIT(A) on various points. Needless to say, the assessee shall extend full co-operation to the CIT(A) without any demur, failing which, the CIT(A) shall at liberty to conclude the appellate proceedings in accordance with law. Hence, the order of the CIT(A) appealed against, is set aside and all the issues raised in the impugned appeal are restored back to the file of the CIT(A) for fresh adjudication in accordance with law after giving reasonable opportunity of hearing to the assessee.

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

Order pronounced in the open Court on 14/09/2023.

Sd/-

**[YOGESH KUMAR US]
JUDICIAL MEMBER**

DATED: /09/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**