

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

**BEFORE
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 5522/Del/2019
Asstt. Year 2015-16

Manish Sharma, 510, Patrakar Parishar Apartment, Sec-05, Vasundhra, Ghaziabad Uttar Pradesh. PAN ATEPS8104J	Vs.	DCIT Circle-1, Ghaziabad
(Appellant)		(Respondent)

Assessee by:	Shri Sankalp, Advocate
Department by:	Ms. Jyoti Verma, Sr. DR
Date of Hearing:	13.09.2023
Date of pronouncement:	21.09.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 31.03.2019 of the Ld. Commissioner of Income Tax (Appeals), Ghaziabad ("**CIT(A)**") pertaining to Assessment Year ("**AY**") 2015-16.

2. The assessee has raised the following grounds:-

- "1. *On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.*
2. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in not admitting the additional evidences filed by the assessee.*

- (ii) That the above action of the CIT(A) is against the fact that assessee was prevented by sufficient and reasonable cause from producing these evidences before the AO during the course of assessment proceedings.
3. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 1,43,00,000/- made by AO on account of unsecured loans invoking section 68 of the Income Tax Act.
- (ii) That the above addition has been confirmed ignoring the various evidences as well as explanation brought on record by the assessee in this regard.
4. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 21,24,042/- made by AO on account of several payments of expenses invoking section 40A(3) of the Income Tax Act
- (ii) That the disallowance has been confirmed rejecting the explanations given by the assessee in this regard.
5. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 10,68,393/- made by AO on account of payments of salaries invoking section 40A(3) of the Income Tax Act.
- (ii) That the disallowance has been confirmed rejecting the explanations along with the evidences given by the assessee in this regard.
6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the above addition by indulging in surmises without bringing on any adverse evidence against the assessee, only on the basis of presumption and assumption.”

3. Briefly stated, the assessee individual is a real estate developer. For AY 2015-16, he e-filed his return on 30.09.2015 declaring income of Rs. 55,60,600/-. It was processed under section 143(1) of the Income Tax Act, 1961 (**the “Act”**). Subsequently, the case was selected for limited scrutiny through CASS. Statutory notice(s) were served upon the assessee. Questionnaire along with notice under section 142(1) was also issued on 3.8.2017 which was not complied with. Notice(s) issued thereafter, also remained uncomplied with. However, on 14.11.2017 the assessee appeared personally and sought adjournment which was allowed. On 20.12.2017 the assessee filed few papers and details and continued to seek adjournment. The Ld. Assessing Officer (**“AO”**) therefore completed the assessment on the basis of details/documents/information furnished by the assessee on

27.12.2017 determining the total income at Rs. 2,30,53,035/- under section 143(3) of the Act including therein addition of Rs. 1,43,00,000/- under section 68 of the Act and disallowance of Rs. 21,24,042/- and Rs. 10,68,393/- under section 40A(3) of the Act.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A). During appellate proceedings, the assessee filed application under Rule 46A of the Income Tax Rules, 1962 (**“the Rules”**) dated 28.02.2019 stating therein that due to unavoidable circumstances he could not file the requisite details/evidence before the Ld. AO. Though details of loan transactions were filed, confirmation from the creditors could not be obtained by the assessee in time. He sought permission of the Ld. CIT(A) to file additional evidence in the form of confirmations from the creditors and photocopy of their PAN Card and requested for admittance. It was also stated that more than 80% of salary had been paid through bank transfer and requested for admittance of bank certificate as additional evidences. It was further submitted due to non co-operative attitude of lenders and even the bankers, these documents could not be submitted before the Ld. AO.

4.1 The Ld. CIT(A) asked for remand report from the Ld. AO who submitted his report dated 13.03.2019 objecting to admittance of the said additional evidence. In his rejoinder the assessee submitted that his case is covered by sub-clause(c) and (d) of sub-section(1) of Rule 46A and urged for admittance of additional evidence in the interest of justice.

4.2 On merits, the assessee filed written submission vide letter dated 14.02.2019 and further elaboration of his case during appellate proceedings which the Ld. CIT(A) incorporated in para 4 at pages 11-15 of his appellate order.

5. The Ld. CIT(A) declined to admit the additional evidence for the reasons given by him in para 8 of his appellate order. He also confirmed the impugned addition of Rs. 1,43,00,000/- made by the Ld. AO under section 68 of the Act and disallowance of Rs. 21,24,042/- under section 40A(3) and

disallowance of Rs. 10,68,393/- on account of cash payment of salary by not accepting the contentions raised by the assessee before him and finding no infirmity in the action of the Ld. AO.

6. Dissatisfied, the assessee is in appeal before the Tribunal and all the grounds relate thereto.

7. The Ld. AR filed before us letter requesting to file additional evidence under Rule 29 of the ITAT Rules stating therein that during the assessment proceedings the assessee was swamped in litigation under SARFESI Act initiated by J & K Bank and was even unwell and not in a position to provide full and complete evidences. The assessee filed documents as additional evidence which have not been admitted by the Ld. CIT(A). The Ld. AR therefore sought the permission of the Tribunal to file "Additional Evidence Paper Book" consisting of 54 pages containing confirmation etc. of the lenders, copies of their ledger account; bank statements of the assessee showing repayment to Lender Sri Ritesh Mahajan and Bank certificate of monthly salary and wages statement. It is submitted by the Ld. AR that the above additional evidence go to the root of the matter and are necessary for effective adjudication of the appeal. He relied on judicial precedents including the decision of Hon'ble Delhi High Court in CIT vs. Text Hundred India Pvt. Ltd. (2013) 351 ITR 57 (Del). The Ld. AR urged that the matter may be remanded back to the Ld. AO for decision afresh. The Ld. DR had no objection thereto.

8. We have perused the orders of the Ld. AO/CIT(A), we are of the view that it is essential in the interest of justice and fair play to consider the submissions of the assessee made before the Ld. CIT(A) in the light of the documents (additional evidence) placed before the Ld. CIT(A) which he declined to admit accepting the plea of the Ld. AO in his remand report. Since both the parties agree that the matter be sent to the Ld. AO, we set aside the orders of the Ld. AO/CIT(A) and restore the matter back to the file of the Ld. AO with direction to him to consider the material already on his records and additional evidence filed before the Ld. CIT(A) and hold further

enquiry if need be and decide the issues afresh in the light of the result of the enquiry. This, in our view, shall meet the ends of justice. The Ld. AO shall afford reasonable opportunity of being heard to the assessee in the fresh assessment proceedings. We order accordingly.

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

Order pronounced in the open court on 21st September, 2023.

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

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

Dated: 21/09/2023

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Copy forwarded to -

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	