

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

BEFORE

**DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 968/Del/2023
Asstt. Year: 2018-19

Clove Garden Food & Beverages P. Ltd. F-12 F/F, Angel Mega Mall, Kaushambhi, Ghaziabad Uttar Pradesh 201 001. PAN AAGCC1721P	Vs.	ITO, Ward 2(2)(2) Ghaziabad.
(Appellant)		(Respondent)

Assessee by:	Shri Sumit Lalchandani, Advocate Shri Abhinav Vijn, CA
Department by:	Shri Vivek Kumar Upadhyay, Sr. DR
Date of Hearing:	31.08.2023
Date of pronouncement:	27.09.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 14.03.2023 of the Ld. Commissioner of Income Tax (Appeals) NFAC Delhi (**"CIT(A)"**) pertaining to Assessment year (**"AY"**) 2018-19.

2. The assessee has taken the following grounds:-

"1. *Under the facts and the circumstances of the case and in law, the order dated 14.03.2023 passed by the CIT(A) under the Act, by sustaining the addition made by the AO in the hands of the Appellant on account of the alleged difference in rental expense of Rs. 23,63,965/- is perverse, incorrect, non-speaking, arbitrary and bad in law.*

2. *Under the facts and circumstances of the case and in law, the CIT(A) and AO have grossly erred in disallowing rental expense and sustaining/making an addition of Rs. 23,63,965/- to the total income of the Appellant.*
3. *Under the facts and circumstances of the case and in law, the CIT(A) and AO have grossly erred in disallowing genuine rental expenditure which was paid through banking channels by the Appellant and requisite TDS on the amounts were duly deposited.*
4. *Under the facts and circumstances of the case and in law, the CIT(A) and AO have erred in not acknowledging/considering the rental agreements filed by the Appellant during assessment which clearly establish the nature of rental expense incurred during the financial year.*
5. *Under the facts and circumstances of the case and in law, the CIT(A) has erred in now considering the written submissions of the Appellant filed on 13.03.2023 and not providing due opportunity of being heard to the Appellant before passing the order under Section 250 of the Act.*
6. *Under the facts and circumstances of the case and in law, the observations made by the CIT(A) and AO are unjust, illegal, arbitrary, bad in law and based on surmises and conjectures.”*

3. Briefly stated, the assessee is in the business of restaurant. It's case for AY 2018-19 was selected for scrutiny of business expenses. During assessment proceedings the Ld. Assessing Officer ("**AO**") noticed that there was discrepancy of Rs. 23,63,965/- in the amount of rental expenses claimed in the return at Rs. 72,05,145/- and reported at Rs. 48,41,180/- in Audit report filed in Form 3CA on which tax at source amounting to Rs. 5,94,695/- was deducted. On query, the assessee submitted that it has incurred rental expenses of Rs. 72,05,145/- and submitted rental agreements. The Ld. AO observed that deduction of TDS of Rs. 5,94,695/- against the rental payments of Rs. 72,05,145/- could not be verified. He therefore disallowed the impugned difference of Rs. 23,63,965/- in the assessment framed by him vide order dated 02.09.2021 under section 143(3) r.w. section 144B of the Income Tax Act, 1961 (**the "Act"**).

4. The Ld. CIT(A) dismissed the appeal of the assessee finding no infirmity in the action of the Ld. AO in making the impugned disallowance. This has brought the assessee before the Tribunal.

5. We have heard the Ld. Representative of the parties. The Ld. AR submitted that there was a difference in the amounts as TDS was deposited on 29.10.2018, just before the filing of audit report and ITR which were filed on 30.10.2018. TDS returns could not be revised before the filing of tax audit report and ITR. Hence, due to such non-revision, only those amounts were depicted in the tax audit report, which were matching with the TDS returns at that point in time. It was also his submission that incurring of expenditure and for the purposes of business has not been disputed by the Ld. AO. Relevant documents in support of the expenses and details of TDS have been furnished before the Ld. AO /CIT(A). The Ld. DR has not controverted the contentions of the Ld. AR.

6. We have considered the submission of the parties. In our opinion, it would be just and fair to remand the matter back to the file of the Ld. AO for the limited purpose of verification that tax has been deducted by the assessee on the entire rental income earned during the year by the recipient and decision afresh after allowing reasonable opportunity of hearing to the assessee. We order accordingly.

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

Order pronounced in the open court on 27th September, 2023.

sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Dated: 27/09/2023

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

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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	