

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H': NEW DELHI**

**BEFORE,
SHRI G.S.PANNU, PRESIDENT
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1250/Del/2021
(ASSESSMENT YEAR 2014-15)**

Sercon India Pvt. Ltd. E-375, First Floor Greater Kailash II South Delhi New Delhi-110 048 PAN-AAACJ 3151E (Appellant)	Vs.	Income Tax Officer Ward-23(1) New Delhi (Respondent)
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Appellant by	Ms. Rano Jain, Advocate
Respondent by	Sh. Amit Katoch, Sr. DR
Date of Hearing	19/09/2023
Date of Pronouncement	04/10/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-28 New Delhi ["Ld. CIT(A)", for short], dated 15/05/2018 for Assessment Year 2014-15.

2. Grounds taken in this appeal are as under:

"1. *In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the Assessment Order passed by the Ld. AO on the basis of surmises, conjectures, assumptions and presumptions:*

- (a) Disallowing an amount of Rs.1,30,75,700/- being adhoc 10% of the total operating and administrative expenses incurred by the appellant amounting to Rs.13,07,57,000/- on the ground alleged non-verification of the genuineness, reasonableness and business purpose of the expenditure incurred by the appellant.*
- (b) Disallowing an amount of Rs.3,27,000/- in respect of interest paid by the appellant on the alleged ground of absence of reasonable explanation.*
- (c) Disallowing an amount of Rs.4,00,000/- incurred on account of settlement of cases on the alleged ground of absence of details.*
- (d) Disallowing an amount of Rs.3,56,711/- on the alleged ground of non-availability of complete details.*

1.1 In assessing the appellant company under the "normal provisions of the Act" as business income instead and in place of assessing the appellant u/s. 115 JB in respect of tax on Book Profit.

2. The Ld. CIT (A) erred in not appreciating the fact that the appellant is a private limited company and was subject to statutory audit and tax audit. The documents in support of the return filed by the appellant i.e. the audited financial statement together with the tax audit report and other related documents including the ledger accounts extracted from the books of account were filed with the Ld. Assessing Officer and the Ld. Assessing Officer has not disputed any of the documents filed nor has he disputed the genuineness and veracity of the same nor has he rejected the books of account.

3. The Ld. CIT (A) erred in confirming the ad-hoc and arbitrary disallowance of expenditure incurred by the appellant without rejecting the books of account and documents filed by the appellant.

4. The above Grounds of Appeal are distinct and separate and without prejudice to each other.

5. It is humbly prayed that the reliefs as prayed for hereinabove and/or such other reliefs as may be justified by the facts and circumstances of the case as may meet the ends of justice should be granted.

6. The appellant craves leave to amend or alter any ground, or add a new ground which may be necessary."

3. There is a delay of 141 days in filing the present Appeal. The assessee filed an affidavit contending that, *'there have been no operations of the Company since last five years, the Company came to know about passing of the order impugned only on 12/03/2021 when the e-mail was received from the Department about the penalty proceedings u/s 271 (1)(c) of the Act. The person in charge of Company's affair at Mumbai tried to contact the Assessee's Representative at Delhi, but he could not succeed due to their non co-operation. After long follow up and persuasion, the papers have been obtained and filed the present Appeal which caused delay of 141 days in filing the present Appeal,'* therefore, sought for condoning the same. For the reasons stated in the affidavit filed by the Assessee for condoning the delay, the delay of 141 days in filing the present Appeal is condoned.

4. Brief facts of the case as per the order of the CIT(A) are that, "the return of income was filed by assessee on 27.11.2014 declaring Nil income and book profit u/s 115JB of Rs. 1,82,44,316/-. The assessee company has claimed to be engaged in the business of providing services in the field of advertisement, publicity, promotion, event management, marketing consultancy, etc. During the assessment proceedings, it was observed by AO that the assessee has shown gross receipts/sales at Rs. 22,10,98,000/- against which, it has claimed operating and administrative expenses of Rs. 13,07,57,000/-. To verify the genuineness of these expenses, AO asked the assessee to produce the complete set of books of account along with bills and vouchers. However, despite of

giving several opportunities, assessee could file ledger accounts only of various expenses in soft copy. Since the AO could not examine the nature and reasonableness and allowability of the said expenses in absence of books of account and supporting documents, he, therefore, to plug the leakage or any gap of such expenditure and to protect the interest of revenue, disallowed the 10% of operating and administrative expenses of Rs. 13,07,57,000/- which amounted to Rs. 1,30,75,700/- and added back to the income of the assessee. Similarly, the interest expenses of Rs. 3,27,000/- and miscellaneous expenses of Rs. 4,00,000/- were also disallowed by him in absence of any reply/details from assessee. The interest on TDS amounting to Rs. 13,000/- claimed as business expenditure was also not allowed by him on the ground that the same in not an allowable expenditure. The provisions of trade payables amounting to Rs. 3,56,711/- was further disallowed by him in absence of any explanation on the part of assessee. Consequently, the AO assessed the income of assessee at Rs. 1,41,72,410/- against the return income of Rs. Nil/- as shown by assessee” vide assessment order dated 31/12/2015.

5. Aggrieved by the assessment order dated 31/12/2016, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 15/05/2018 dismissed the Appeal filed by the assessee. Aggrieved by the order of the CIT(A), the assessee preferred the present Appeal on the grounds mentioned above.

6. The assessee had also filed an application for additional evidence under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963, contending that the Company was not in a position to gather all the relevant documents and papers for being submitted before the Assessing Officer as required by the A.O. at the time of assessment proceedings and before the CIT(A) at the time of appellate proceedings, therefore, the same have not been considered by the authorities in the respective proceedings. Further contended that, with the help and support of an Employee of the Group Company, the assessee could gather some records which have been submitted as additional evidence, which supports the claim of the Assessee. Therefore, the Assessee's Representative sought for admitting the additional evidence by allowing the application.

7. The Ld. Departmental Representative relying on the orders of the Lower Authorities sought for dismissal of the Appeal and also objected for admission of additional evidence.

8. We have heard both the parties and perused the material available on record. During the year under consideration, the assessee shown gross receipt/sales at Rs. 22,10,98,000/- against which the assessee claimed operating and administrative expenses of Rs. 13,07,57,000/-. On perusal of the various heads of expenditures, the A.O, was of the opinion that the assessee had claimed huge amount under various heads which needs to be verified by way of bills/vouchers and their justification for claim through books of accounts and supportive documentary evidences. The A.O. asked the assessee

to produce the complete set of books of accounts and other document to substantiate the claim. The assessee produced only ledger of various expenses in soft copy and even after providing sufficient opportunities, except filing the ledger account of expenses, the Assessee has not produced any documents. Therefore, the A.O. made various additions/disallowances which have been confirmed by the CIT(A).

9. It is the case of the assessee that the books of account and records of the assessee company were being maintained at New Delhi and due to closer of activities of the assessee company, the employees of the Company left the service and on account of which there was a communication gap between the Assessee's Representative and the Company in connection with submission of documents during the assessment proceedings and also during the appellate proceedings. Further, the assessee company was not in a position to gather all the documents and submit the same before the authorities which resulted in making the addition by the A.O. Further contended that, the assessee with the help and support of the Employees from Group Companies, now able to gather some records which were produced as additional evidence. In support, an affidavit dated 21/02/2023 has been furnished by Sh. Ankit Dogra, Director of the Assessee Company wherein averments have been made detailing the circumstances in which appropriate and complete records could not be produced before the Assessing Officer in the course of assessment. There is

neither rebuttal and nor any material lead by the respondent-Revenue to assail the averments made in the affidavit.

10. The assessee had not produced the complete books of accounts along with bills and vouchers and other documentary evidence to substantiate the claim of the assessee before the A.O. or before the CIT(A) and it is the case of the Assessee that the Assessee could not produce the documents due to non availability of the same to the Assessee at that point of time. It is quite evident that the material referred by the assessee company is relevant to correctly determine the tax liability of the Assessee. Since the Assessee has produced the documents before the Tribunal along with an Application filed by the Assessee under Rule 29 of Income Tax (Appellate Tribunal Rules, 1963) as additional evidence, in the facts and circumstances of the case, we allow the Application filed by the Assessee under Rule 29 of Income Tax (Appellate Tribunal Rules, 1963), as the Lower authorities had no opportunity to verify the documents produced along with the said application, without commenting anything on the merit of the case, we admit the additional documents produced by the Assessee and restore the matter to the file of the A.O. with a direction to consider the documents produced by the assessee and adjudicate the issues after giving opportunity of being heard to the assessee. Accordingly, we partly allow the appeal filed by the assessee.

11. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 04th October, 2023

Sd/-
(G.S.PANNU)
PRESIDENT

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 04/10/2023
Pk/R.N, Sr ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI