

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.4568/Del/2017
(Assessment Year: 2011-12)

Niho Construction Ltd, 22, 1 st Floor, Hauz Khas, New Delhi (Appellant) PAN: AABCN8530G	Vs. ITO, Ward-18(2), New Delhi (Respondent)
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Assessee by :	Shri Rajkumar Gupta, CA Shri J.P. Sharma, CA
Revenue by:	Shri Jeetender Kumar, Sr. DR
Date of Hearing	03/01/2024
Date of pronouncement	/01/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 4568/Del/2017 for AY 2011-12, arises out of the order of the Id CIT(A)-6, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] dated 23.04.2017 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.03.2014 by the ITO, Ward-13(2), New Delhi (hereinafter referred to as 'Id. AO').
2. At the outset, we find that the assessee had filed additional grounds stating that additional evidences filed by it before the Id CIT(A) were not admitted on the ground that sufficient opportunities were indeed given to the assessee by the Id AO during the course of assessment proceedings. The Id AO in the assessment order had made 100% disallowances of expenses on account of project washed

away of Rs. 4,54,97,000/-; on account of miscellaneous balance written off of Rs. 1,75,65,646/-; on account of interest/ rebate/ delay charges of Rs. 1,63,99,917/- and disallowance u/s 40(a)(ia) of the Act of Rs. 10,81,933/-. From the ordersheet entries of the assessment proceedings placed on record by the Id DR before us, we find that the assessee had in fact furnished the ledger account copies of the all these expenses together with various other expenses before the Id AO. Admittedly the assessee had not furnished the books of account before the Id AO despite being called for by the Id AO on several occasions. This behavior of the assessee had apparently driven the Id AO to make 100% disallowance of aforesaid four expenses. However, it is a fact that the Id AO had accepted the claim of the other expenses claimed by the assessee in the return of income, despite the fact that the books of account were not produced. Admittedly the disallowance of the aforesaid expenses were made for want of documentary evidences from the side of the assessee. These documentary evidences were admittedly filed by the assessee before the Id CIT(A) in the form of additional evidences in terms of Rule 46A of the Income Tax Rules. The Id CIT(A) even sought for remand report from the Id AO on these additional evidences. The Id AO gave his remand report by stating that the additional evidences should not be admitted by the Id CIT(A) in view of the fact that the sufficient opportunities were given to the assessee during the course of assessment proceedings. We find that the Id CIT(A) merely followed this remand report and proceeded to deny the admission of additional evidences filed by the assessee, without going into the fact as to whether these evidences are indeed relevant and necessary material for the adjudication of the issue in dispute before him. This action of the Id CIT(A), in our considered opinion, is not sustainable. In these facts and circumstances, we are inclined to admit the additional grounds raised by the assessee and direct the Id CIT(A) to admit all the additional evidences filed by the

assessee in support of disallowance of aforesaid four items and decided the allowability of the same afresh, in accordance with law. The assessee is also given liberty to furnish further evidences, if any, in support of its contentions. Accordingly, grounds raised and additional grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on /01/2024.

-Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated: /01/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi