

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.6525/Del/2017
Assessment Year: 2013-14

Netlink Software Pvt. Ltd. G-3, Ground Floor, Community Centre, C- Block, Naraina Vihar, New Delhi-110028 PAN No.AACCN5731A	Vs.	DCIT Circle – 18 (1) Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Varun Nagrath, Advocate Sh. Jayesh Kumar, CA
Respondent by	Sh. Muneesh Rajani, Sr. DR

Date of hearing:	24/01/2024
Date of Pronouncement:	24/01/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee preferred against the order of the CIT(A)-37, New Delhi dated 28.08.2017 pertaining to A.Y.2013-14.

2. The grievance of the assessee read as under :-

“1. That on the facts and circumstances of the case and the law in force, the Ld. Commissioner of Income Tax (Appeals) -37, Delhi (hereinafter referred to as the "Ld. CIT(A)") has exceeded his jurisdiction by passing an order under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") against the Appellant, whose jurisdiction lied before the Ld. CIT (A)- 28.

2. That on the facts and circumstances of the case and the law in force, the order passed under section 250 of the Act against the Appellant is void-ab-initio and is liable to be set aside as the ld. CIT(A)-37 has passed it without proper territorial jurisdiction.

That without prejudice to the above and on merits :

3. That on the facts of the case and the law in force, while rejecting the additional evidence filed by the Appellant on the basis of remand report issued by the Ld. Assessing Officer, the Ld. CIT(A)-37 failed to grant any opportunity for rebuttal and file cross objections or rejoinder, thereby, violating the well-established principle of Audi Alteram Partem and thus the Order is liable to be quashed.

4. That on the facts and circumstances of the case and the law in force, the La. CIT(A)-37 grossly erred in not accepting but arbitrarily dismissing the additional ground of appeal raised by the Appellant, which went to the root of the matter, without assigning any categorical findings which was his incumbent duty as per the law and thus, the order so passed is based on irrelevant consideration, without appreciating the facts and without following the law and procedure and thus liable to be quashed.

5. That the Ld. CIT(A)-37 has erred in disallowing the relief claimed for Assessment Year 2013-14 with regard to double taxation of commission expense payable to the employees, amounting to Rs. 89,10,547/-, as he failed to appreciate that the said amount was already disallowed in the preceding Assessment Year 2012-13.

6. That on the facts and circumstances of the case and the law in force, the order passed by the Ld. CIT(A)-37 under Section 250 of the Act is violative of the settled legal principles and contravenes the provision of Article 265 of the Constitution of India, 1950 and therefore liable to be set aside.

7. That having regard to the factual dictum and circumstances of the case and the law in force the Ld. CIT(A)-37 grossly erred in affirming the disallowance of interest expenditure amounting to Rs.8,25,000, in terms of section 40(a)(ia) of the Act made vide the impugned Assessment Order, without appreciating that the withholding taxes were duly withheld and deposited by the Appellant and so, provisions of section 40(a)(ia) of the Act were applicable to the case.

8. That the order as passed by the Ld. CIT(A)-37 is vitiated as it is based either on irrelevant considerations or irrelevant application of law.

3. The peculiar facts of the case are that the assessee filed appeal before CIT(A)-6, Delhi. Vide letter dated 31.05.2022 the jurisdiction was transferred from CIT(A)-6, Delhi to CIT(A)-37, Delhi. The assessee received a notice of hearing dated 17.08.2017 from CIT(A)-28, Delhi and finally appellate order was passed by CIT(A)-37,

New Delhi. The assessee was not sure before whom he should appear and file proper submission.

4. We are of the considered view that the assessee deserves a second chance on the above mentioned peculiar facts. We, therefore, restore the appeal to the files of the CIT(A)-37 to be decided afresh after affording a reasonable and adequate opportunity of being heard to the assessee.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

6. Decision announced in the open court on 24.01.2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- .01.2024

Copy forwarded to:

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

ASSISTANT REGISTRAR
NEW DELHI