

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.99/Ahd/2022
Assessment Year: 2015-16**

Express Cargo Carriers Pvt. Ltd., Econo Plast Estate, Near Ahmedabad Mercantile Bank, Opp. Maniyar Trailor, Rakhial, Ahmedabad – 380 023. [PAN – AABCE 7315 A] (Appellant)	Vs.	The Income Tax Officer, Ward – 2(1)(1), Ahmedabad. (Respondent)
Assessee by	Shri Mehul Thakkar, AR	
Revenue by	Shri Prateek Sharma, Sr. DR	
Date of Hearing	05.03.2024	
Date of Pronouncement	08.03.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 03.12.2021 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal :-

“1. Addition on account of 40(a)(ia) totalling to Rs.1,28,93,652/-:

1. *The learned A.O. as well as Hon'ble CIT(A) has erred in law and on facts while not considering the reply of the appellant company filed in the course of the assessment proceedings in the right perspective manner.*
2. *The learned A.O. as well as Hon'ble CIT(A) has erred in law and on facts while observed that in perusal of the ledger accounts it revealed that the assessee has not deducted TDS, irrespective of*

fact that as per the provisions of sub-Section 5 of Section 194C the appellant company was not required to deduct TDS.

3. *The learned A.O. as well as Hon'ble CIT(A) erred in law and on facts while not considering that the addition made is not in accordance with the law and facts of the appellant's case. As the appellant is Goods Transport Agency (GTA) the assessee was not required to deduct tax in view of the provisions of sub-Section 5 to Section 194C.*
4. *The learned A.O. as well as Hon'ble CIT(A) has erred while not considering that during the course of appellant proceedings the appellant has already filed the quarterly TDS returns of the year under consideration and the non-filing of TDS returns was a technical breach and the same had been concluded, however, the Hon'ble CIT(A) did not consider the same.*
5. *The Hon'ble CIT(A) has erred while observing that the appellant has not attended any hearings between the period 17-5-18 to 05-12-19, actually there is some understanding, the appellant has filed various submissions with documentary evidences before the Hon'ble CIT(A) as well as the Hon'ble CIT(A) has also asked for the remand report and the appellant has also replied against the remand report, however, the Hon'ble CIT(A) has not considered the same.*
6. *The learned A.O. as well as Hon'ble CIT(A) has erred as well as on facts while not considering that as per the settled law by the decisions of various High Courts and Tribunals that if TDS default pertains to procedure, then the provisions of section 4(a)(ia) does not become applicable and the decisions of the same were also submitted.*

In the light of the above facts and submission, it is respectfully submitted that the addition made by the learned A.O. under section 40(a)(ia) totalling to Rs.1,28,93,652/- is required to be deleted.

II. CHARGE OF INTEREST U/S. 234B, 234C AND 234D OF THE ACT.

1. *The learned A.O. had erred in law and on facts in levying interest u/s. 234B/234C of the Act. The appellant denies his liability to pay interest u/s. 234B/234C of the Act considering the above facts.*

III. INITIATION OF PENALTY UNDER SECTION 271(1)(c) OF THE ACT.

1. *The learned A.O. had erred in law and on facts in initiating penalty u/s.271(1)(c) of the I.T. Act. Considering the facts initiation of Penalty Proceeding u/s.271(1)(c) of the Act required to be dropped.*

The appellant, reserves its right to add, amend, alter, substitute or modify all or any of the grounds stated hereinabove as the facts and circumstances of case may justify.”

3. The return of income for the assessment year 2015-16 was filed on 31.10.2015 declaring income of Rs.3,91,350/-. The case was selected for complete scrutiny for the reasons that low profit was shown by large transporters. After issuance of statutory notices, the assessee filed details before the Assessing Officer. During the year under consideration, the assessee company was engaged in transportation business. The Assessing Officer made disallowance under Section 40(a) of the Income Tax Act, 1961 to the extent of Rs.1,01,35,590/-, disallowance out of freight expenses of Rs.6,19,889/- and disallowance of local freight charges and crossing cut freight charges amounting to Rs.21,38,173/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that before the CIT(A) the assessee has filed additional evidence and the CIT(A) has called for Remand Report which was also there on record but due to the fact that the case was transferred to National Faceless Appeal Centre (NFAC), Delhi, the two notices which were issued was not received by the assessee and without taking cognisance of the assessee's additional evidence and not giving opportunity of hearing, the NFAC dismissed the appeal of the assessee.

6. The Ld. DR relied upon the order of the NFAC (CIT(A)).

7. We have heard both the parties and perused all the relevant material available on record. The delay in filing the present appeal is attributable to the reason that the assessee was not aware about the transfer of his appeal to NFAC and the assessee could not contest the appeal before the CIT(A). The delay is not deliberate and hence the delay is condoned. It is pertinent to note that the NFAC has not stated whether the notices were properly served to the assessee or not after the case was transferred to NFAC. Besides this, the assessee has filed

additional evidence and the CIT(A) prior to transfer of appeal to NFAC has called for remand report which was there on record. Ignoring all the additional evidences as well as the submissions made by the assessee, the NFAC passed an ex-parte order which is not justifiable. Therefore, the matter is remanded back to the file of the CIT(A) for proper adjudication of the issues contested by the assessee after taking cognisance of the additional evidences as well as remand report of the Assessing Officer and decide the issues as per law. All the contentions of the assessee are open before the CIT(A) which should be adjudicated as per law. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice.

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

Order pronounced in the open Court on this 8th March, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 8th day of March, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad