

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

**BEFORE SH. R.K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.2994/Del/2015
Assessment Year: 2009-10

Sangyon Automotive Pvt. Ltd. 14D, 14 th Floor, Hansalaya, 15, Barakhamba Road, New Delhi – 110001 PAN AAGCS5366L (APPELLANT)	Vs	ACIT, Central Circle, Bhainsali Road, Meerut (RESPONDENT)
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Appellant by	Sh. G.C Srivastava, Advocate
Respondent by	Sh. S. S Rana, Sr. DR

Date of hearing:	13/09/2018
Date of Pronouncement:	27/09/2018

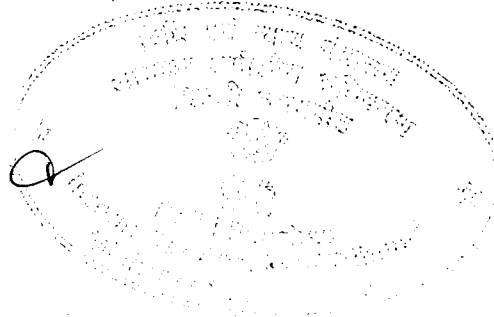
ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 10.03.2015 of the CIT (A), Meerut relating to A. Y. 2009-10.

2. The grounds raised by the assessee are as under :-

1. *“On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), Meerut, erred in law as well as on fact in confirming the addition of Rs.3,98,00,000/- made by the A.O., which was received as loan in the hand of the appellant.*

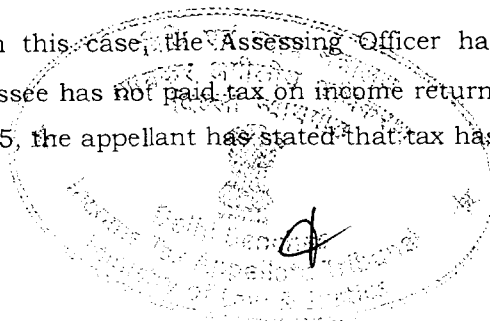


2. *On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), Meerut erred in law as well as on fact in confirming the action of the A.O. without jurisdiction, of visiting the issue of raising of loan by the appellant.*
3. *On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), Meerut, erred in law as well as on fact in confirming the addition of Rs.3,98,00,000/-, made by the A. O., in an assessment made under section 153A of the I. T. Act, in the absence of any incriminating material, which was found and seized during the course of search under section 132 of the I. T. Act, 1961.*
4. *The appellant craves leave to add, alter, amend, raise or delete any or all grounds of appeal.”*

3. Facts of the case, in brief are that the assessee is a company. A search operation was carried out in the Subharti Group of cases on 12.11.2010. Being a part of this search, a search was carried out at bank accounts of the assessee situated at Oriental Bank of Commerce, Subharti Dental College Branch, Subhartipuram, Meerut, Oriental Bank of Commerce, Maliyana Branch, Meerut and Oriental Bank of Commerce, Sadar Bazar, Meerut Cantt on 04.12.2010. During the search certain FDRs and cash have been found and seized. In response to notice 153A the assessee filed its return of income declaring loss of Rs.8,403/- as mentioned by the Assessing Officer in the body of the assessment order. The Assessing Officer completed the assessment on a total income of Rs.3,97,91,597/- by making addition of Rs.3,98,00,0000/- u/s 68 of the Act On account of unsecured loan.

4. In appeal Ld. CIT(A) dismissed the appeal for non-depositing the admitted tax by the assessee by observing as under :-

“3. In this case, the Assessing Officer has mentioned in ITNS 51 that the assessee has not paid tax on income returned. In the relevant column in form No.35, the appellant has stated that tax has been paid on returned income. In



this situation, the original assessment record of the appellant was called for and examined. It was found from an examination of the assessment record that the total tax and interest of Rs.2,597/- was remaining payable on the returned income of Rs.8,403/-.

4. The appeal is accordingly treated as dismissed for statistical purposes.”

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The Ld. Counsel for the assessee submitted that the Assessing Officer in the body of the assessment order has mentioned that the assessee has filed return of income declaring loss of Rs.8,403/-. He submitted that the Assessing Officer while making the addition of Rs.3,98,00,000/- has considered the loss at Rs.8,403/- and determined the total income at Rs.3,97,91,597/-. He submitted that the Ld. CIT (A) dismissed the appeal filed by the assessee for nonpayment of admitted tax of Rs.2597/-.

7. Referring to the copy of the challan substantiating the payment of amount of Rs.2,597/- on 12.09.2018, he submitted that the assessee in the meantime has paid the admitted tax. He accordingly submitted that since the appeal has not been decided by the CIT (A) on merit because of nonpayment of admitted tax and now that the assessee has paid the admitted tax, therefore, the matter should be restored back to the file of the CIT(A) for deciding the appeal on merit.

8. The Ld. DR on the other hand heavily relied on the order of the CIT(A) and submitted that CIT (A) has rightly dismissed the appeal filed by the assessee for nonpayment of admitted tax.

9. We have considered the rival arguments made by both the sides and perused the material available on record. We find the Ld. CIT(A) dismissed the appeal filed by the assessee by treating the same as non-est since the



assessee had not deposited the admitted tax of Rs.2,597/- on returned income of Rs.8403/-. Although it is the submission of the Ld. Counsel for the assessee that the assessee had filed the return of income at loss of Rs.8,403/- which is evident from the assessment order, however, he filed the challan evidencing the payment of admitted tax of Rs.2,597/- which is the tax payable on returned income of Rs.8,403/-. Since the appeal filed by assessee was dismissed as non-est due to non-payment of admitted tax and now that assessee has deposited admitted tax of Rs.2,597 and since the CIT (A) had not decided the appeal on merit, therefore, considering the totality of the facts and circumstances of the case we deem it proper to restore the matter back to the file of the CIT(A) with the direction to admit the appeal and decide the issue on merit. Needless to say the CIT (A) shall give due opportunity of being heard to the assessee and decide the appeal as per law. We hold and direct accordingly. The appeal filed by the assessee is accordingly allowed for statistical purposes.

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

11. The order pronounced in the open court on 27.09.2018.

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

NEHA

Date: 27.09.2018

Copy forwarded to:

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

(R.K. PANDA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI