

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

**BEFORE SHRI C. N.PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.41/Del/2024, A.Y. 2017-18

Conarch Associates B-58, Lohia Nagar, Ghaziabad, UP PAN :AAKFC2659P (Appellant)	Vs.	ACIT, Circle 1(1)(1), Meerut (Respondent)
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Appellant by	Sh. Dinesh Kumar, CA
Respondent by	Sh. Narpat Singh, Sr.DR

Date of Hearing	01/05/2024
Date of Pronouncement	01/05/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

The appeal filed by the assessee is directed against the order, dated 28.07.2023, of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi [In Short 'the CIT(A)'].

2. The facts, in brief, are that the assessee/appellant, a partnership firm, engaged in civil construction works, filed its return of

income of the assessment year 2017-18 declaring income of Rs.35,85,440/-. The case was scrutinized. Consequentially, the assessment was completed u/s 143(3) of the Income Tax Act, 1961 [In short as 'the Act') determining income at Rs.3,25,63,793/-. Aggrieved the appellant-assessee filed appeal before the CIT(A), who dismissed the appeal due to non-prosecution. Hence, the matter is before us.

3. During the assessment proceedings, the assessee/ appellant did not provide the requisite details of Sundry Creditors as mentioned on page 2 of the assessment order. Therefore, the Assessing Officer [In Short 'the AO'] held that the sundry creditors to the extent of the aggregate purchases of two months are genuine and remaining creditors of Rs.1,11,72,923/- are non-genuine and hence, he taxed the creditors of Rs.1,11,72,923/- u/s 68 of the Act. Similarly, the AO, due to failure of non-submission of there requisite details of various expenses, as mentioned on page 3 and 4 of the assessment order, during the assessment proceedings, held that liabilities of expenses to the extent of 2 months expenses are genuine and remaining payable expenses of Rs.91,04,907/- are non-genuine and hence, the same were taxed accordingly. Further, the AO, due to failure of non-submission of there quisite details of royalty expenses, interest penalty payment and repairs & maintenance expenses as mentioned on page 4 of the

assessment order, also taxed 50% of aggregate of these expenses under three heads.

4. The issues before us are the above-mentioned additions and disallowance aggregating to Rs.1,24,99,960/- raised vide six grounds of appeal.

5. Before us, the Ld. AR contended that neither the AO nor the CIT(A) have provided proper opportunities of being heard which as evident from the fact that the entire assessment proceedings were concluded within very short span and at the fag end of time limitation period and the appellate proceedings were concluded within very short span without considering the assessee/appellant's submission filed before the CIT(A) vide ack. no. 211862671080623 on 08.06.2023. The Ld. AR submitted that there was only one non-compliance during the appellate proceedings due to illness of the main partner of the assessee/appellant. In support of illness, a medical certificate was also filed before us. In view of the above, the Ld. AR prayed for restoration of the matter to the file of the CIT(A) for fresh adjudication. To which, the Ld. DR appeared in agreement.

6. We have heard the rival parties and perused the case records. It is evident from the CIT(A)'s order that there is delay in filing the appeal.

However, the CIT(A) has neither condoned the delay nor has rejected the appeal being belated. He has decided the appeal on merit. In such facts and circumstances, we are of the considered view that the CIT(A) has condoned the delay and thereafter he has decided the case on merit. We are of the considered view that the AO had not examined the case properly. Therefore, in the interest of justice and non-affording reasonable opportunity of being heard by the subordinate authorities, we are of the considered view that this case needs to be restored back to AO and not to the CIT(A). The AO should provide reasonable opportunities of being heard to the assessee/appellant to file the relevant details and represent its case on merits. After all, the AO has to pass the order as per law and therefore, she/he is free to examine and verify all documentary evidences furnished by the assessee/appellant and do needful as per the law. We are refraining from offering any comment on merit of the case. We therefore, deem it fit to set aside the impugned order and remit the matter back to the file of the AO for de-novo consideration and accordingly ordered so. The assessee/appellant should ensure compliances during the set-aside proceeding before the AO who is also required to provide reasonable opportunities of being heard to the assessee before deciding the case on merit.

7. In view of the above, appeal is allowed for statistical purposes.

Order pronounced in open Court on 1st May, 2024.

Sd/-

(C.N.PRASAD)

JUDICIAL MEMBER

Dated: 01/05/2024

Binita, Sr. PS

Copy forwarded to:

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

Sd/-

(AVDHESH KUMAR MISHRA)

ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI