

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

**BEFORE,  
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.2545/Del/2019  
(ASSESSMENT YEAR 2014-15)**

M/s Truth India Housing Pvt. Ltd. 903A, Indra Prakash Building Barakhama Road New Delhi-110001 PAN-AADCT8784A <b>(Appellant)</b>	Vs.	Income Tax Officer Ward-25(4) New Delhi       <b>(Respondent)</b>
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Assessee by	None
Respondent by	Shri Anuj Gard, Sr. DR
Date of Hearing	08/05/2024
Date of Pronouncement	17/05/2024

**ORDER**

**PER S.RIFAUH RAHMAN, AM:**

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-9, New Delhi ["Ld. CIT(A)", for short], dated 12/09/2018 for Assessment Year 2014-15.

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

*“1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.*

*2. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 51,80,000/- made by AO on account of difference in sale value of shops treating the same as undisclosed income. (ii) That the disallowance has been confirmed rejecting the detailed explanation along with the evidences filed by the assessee reconciling the difference in the sale value of shops.*

*3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 75,00,000/- made by the AO on account of purchase of plot treating the same as-unexplained income of the assessee.*

*(ii) That the above addition has been confirmed ignoring the fact that alleged amount has already been recorded in the books of accounts of the assessee company and the payment has been made from the explained sources.*

*(iii) That the above addition has been confirmed rejecting the submissions and explanations given by the assessee along with the evidences placed on record.*

*4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the additions without there being any adverse material against the assessee available on record.*

*5. On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in confirming the above addition by grossly indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption.*

*6. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs. 79,825/- being 10% of the following expenses:*

<i>a. Building Maintenance</i>	<i>Rs. 52,436/-</i>
<i>b. Car Running and Maintenance</i>	<i>Rs.37,000/-</i>
<i>c. Conveyance</i>	<i>Rs.3,95,565/-</i>
<i>d. Telephone Expenses</i>	<i>Rs.90,133/-</i>
<i>e. Travelling Expenses</i>	<i><u>Rs.2,23,119/-</u></i>
<i>Total</i>	<i>Rs.7,98,253/-</i>

*(ii) That the disallowance has been confirmed despite the expenses having been incurred wholly & exclusively for the purposes of business.*

*(iii) That the disallowance has been confirmed arbitrarily @ 10% of the total expenses, without there being any basis for the same.*

*7. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.1,24,594/- on account of late fees of TDS and interest on TDS.*

*8. That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

**3.** At the time of hearing, none appeared on behalf of the assessee, even though RPAD notice was issued to the assessee but none appeared on behalf of the assessee. We observed from the record that this appeal was filed on 25/03/2019 and the first hearing was posted on 27/04/2022, the assessee was represented on the date of hearing by Sh. Vivek Shukla and from the next date of hearing i.e. 26<sup>th</sup> July, 2022, eight times the case was posted for hearing but none appeared on behalf of the assessee nor there was any request for adjournment. Even today none appeared nor there any request for adjournment. Therefore, the case is disposed off with the assistance of Ld. DR.

4. At the time of hearing, Ld. DR brought to our notice basic facts of this case. From the submissions of the Ld. DR, we observed that the return of income was filed on 22/11/2014 declaring an income of Rs.11,11,180/-. The case was selected for scrutiny and assessment u/s 143(3) was completed and the Assessing Officer has made the following disallowance:

- Disallowance of undisclosed income Rs.51,80,000/-
- Disallowance of unexplained income Rs.75,00,000/-
- Disallowance of expenses Rs.79,825/-
- Disallowance of Donation Rs.51,550/-
- Disallowance of interest of TDS and Late Fee Rs.1,24,594/-

5. Against the above order, the assessee filed an appeal before the Ld. CIT(A) and filed the detailed submissions and also filed the additional evidences under Rule 46A. The Ld. CIT(A) called for the remand report. After considering the remand report and submissions of the assessee, the CIT(A) has dismissed the grounds raised by the assessee except on the issue of donation, the same was remitted back to Assessing Officer for verification.

**6.** Aggrieved with the above order, the assessee is in appeal before us.

**7.** The Ld. DR brought to our notice detailed findings of the Ld. CIT(A) and submitted that the Ld. CIT(A) has considered the submissions and additional evidence submitted by the assessee and dismissed the grounds raised by the assessee with the reasoned order.

**8.** Considered the submissions of Ld. DR and material available on record, we observed that Ld. CIT(A) has considered the submissions of the assessee and dismissed the grounds raised by the assessee with the following observations as under:-

**(i) Disallowance of undisclosed income Rs.51,80,000/-**

“5.9 As noted earlier, the additional evidence so submitted by the AR of the appellant was forwarded to the AO for report, on the remand report filed by the AO, the AR has also filed rejoinder of this document have been considered. It is noticed that even during appellate proceedings, the additional evidence whatsoever filed and rejoinder to the remand report, there is no conclusive evidence in support of its claim that it

was 40 shops and not 33 shops sold during that period. The document in the nature of agreement of sale pertaining to those 40 shops filed as additional evidence have also been considered by the AO at the remand stage but it is not proved beyond doubt that these documents were really authenticated and claim of computer system being none functional at that point of time. In totality of the circumstances, it does not inspire confidence in this regard and therefore, I am inclined to uphold the disallowance of Rs. 51,80,000/- made by the AO. Appellant fails in this ground of appeal.”

**(ii) Disallowance of unexplained income Rs.75,00,000/-**

“6.5 Submission of the appellant and additional evidence was also considered by the AO and the remand report so submitted was given to the appellant for rejoinder. The AR has filed rejoinder as noted earlier. On careful consideration of facts of the ground and all relevant documents adduced by the Appellant, it is noted that despite of being provided ample number of opportunities it has squarely failed to produce the

basic crucial books of account in the nature of cash book to demonstrate the availability of said cash amount. Its book amount and not making available Sh. Harbhajan one of the sellers for deposition before the AO also leads to the scenario of insufficient discharge of onus cast upon the appellant to prove the transaction. Besides the factual narration emanating from the purchase deed wherein clearly mentioned that no payment outstanding as on date of registration of conveyance did where as appellant claimed making payment of had a later date to the seller raises serious doubt on the genuineness of transaction. In factum matrix of the case, I am inclined to uphold the addition of Rs. 75,00,000/- as unexplained investment for the very basic fact that on the date of registration of conveyance deed, the appellant has already made complete payment which is no recorded in its books of account w.r.t source of the fund. Hence this ground is also dismissed.”

**(iii) Disallowance of expenses Rs.79,825/-**

“7.5 Considered the facts, ground, submission of the appellant and impugned order. Per fact, the appellant has claimed an amount of Rs. 7,98,253/- as expenditure pertaining to Building maintenance expenses Rs.52436/-, Car Running & Maintenance Rs.37000/-, Conveyance Rs. 395565/-, Telephone Expenses Rs.90133/-, Travelling Expenses Rs.223119/-respectively.

7.6 The AO called for books of account along with bills and vouchers in original for verification which was not produced by the assessee company and therefore 10% (1/10) was disallowed on the ground that most of the expenses have been incurred in cash and are not completely verifiable. Contra, it is submitted by the AR the AO never raised any query regarding the above expenses except in the questionnaire dated 26.09.2016 which included production of books of account vouchers and documents.

However, it is admitted fact that assessee company failed to produce the same. It has been held by the Hon'ble Courts/ Tribunals that onus is on the party/ assessee to adduce the

evidences in support of its claim. It has been held in the case of CIT vs Calcutta Agency Ltd (1951) 19 ITR 191 by the Hon'ble Apex Court that in order to claim that an expenditure falls u/s 37(1), the burden of proving the necessary facts in that connection is on the assessee. Similarly, the Hon'ble High Court of Guhawati in the case of Assam Pesticides and Agro Chemical vs. CIT (1997) 227 ITR 846 held that it cannot be said that even if the taxpayer does not produce any evidence in support of the claim for allowance, the ITO himself independently is to collect evidence and decide that the allowance claimed is baseless having regard to the legitimate business needs of the assessee. It is for the taxpayer to establish by evidence that a particular allowance is justified. The law does not prescribe any quantitative test to find out whether the onus in a particular case has been duly discharged. A decision of the final fact finding authority is conclusive and binding. Similarly, the jurisdictional high court of Delhi in the case of CIT Vs. Modi Stone Ltd. [2011] 15 taxmann.com 112 (Delhi),

while deciding the issue of business expenditure u/s 37(1) of the Act held that the onus of proving alleged payment was on assessee, and since he had not produced any evidence to prove such payment, neither commissioner appeal nor tribunal could have allowed those payments without having any material before them to substantiate such payments.”

**(iv) Disallowance of interest of TDS and Late Fee Rs.1,24,594/-**

“9. With respect to Ground No.6 it is interesting to note that the appellant has not made any effective evidential submission to controvert the finding of the AO in as much as no evidence or explanation whatsoever has been adduced before me to negate the finding w.r.t disallowance of interest paid on TDS and late fee thereupon.

Since, the appellant company has not pressed this ground of appeal the same is dismissed as not pressed.”

After considering the detailed findings of the Ld. CIT(A), we do not see any reason to disturb the same, accordingly, the appeal filed by the assessee is dismissed.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in open Court on 17<sup>th</sup> May, 2024.

Sd/-

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

Dated: 17/05/2024

*Pk/sps*

Copy forwarded to:

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

Sd/-

**(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI