

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

**BEFORE SHRI GS PANNU, VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No:- 7289/Del/2019
Assessment Year: 2012-13**

Income Tax Officer, Ward-9(1), New Delhi.	Vs.	M/s Falcon Realty Service Pvt. Ltd., 801, 8 th Floor, New Delhi House, 27, Barakhamba Road, New Delhi.
PAN No: AAACF1524D		
APPELLANT		RESPONDENT

Assessee by : None.
Revenue by : Shri Vivek Kumar Upadhyay, Sr.DR

Date of Hearing : 21.05.2024
Date of Pronouncement : 13.06.2024

ORDER

PER ANUBHAV SHARMA, JM

This appeal has been preferred by the Revenue against the order dated 14.06.2019 of Ld. Commissioner of Income-Tax (Appeals)-34 (hereinafter referred to as "Ld. CIT(A)"), New Delhi in Appeal No. 19/15-16 arising out of an appeal before it against the

order dated 30.03.2015 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-9(1), New Delhi (hereinafter referred as the Ld. AO) for Assessment Year 2012-13.

2. Heard and perused the record.

3. At the time of hearing, no one appeared. The record shows that earlier, on 4.12.2023, no one appeared for assessee. The matter was kept for order however, released subsequently with the notice to the assessee for 21.5.2024 and the notices issued by RDAP were received back with endorsement by Department of Post stating that the assessee had left. Accordingly arguments of Ld. DR were heard who supported the findings of the Ld. AO.

4. Appreciating the matter on record, it comes up that the assessee's return was taken up for scrutiny under CASS and AO had examined various aspects of the expenditure debited in the P&L Account and certain income not reported. In appeal the Ld. CIT(A) by way of confirming certain additions and deleting other, allowed the appeal partly and for which revenue is in appeal raising following grounds:

“1. The Ld. CIT(A) erred on the facts and circumstances of the case and in law in deleting the addition Rs. 1,78,870/- on account of interest paid without appreciating the fact that no TDS has been deducted on the interest paid?”

2. The Ld. CIT(A) erred on the facts and circumstances of the case and in law in deleting the addition Rs. 1,28,750/- on account of advertisement expenses without appreciating the fact that the service tax deducted was not deposited in Govt. treasury?”

3. The Ld. CIT(A) erred on the facts and circumstances of the case and in law in deleting the addition Rs. 78,00,000/- on account of disallowance of salary paid to directors on which the TDS deducted was not deposited in Govt. Account within stipulated period?”

4. The Ld. CIT(A) erred on the facts and circumstances of the case and in law in deleting the addition Rs. 1,28,77,048/- on account of closing balances of creditors and addition of Rs. 34,18,650/- on account of non-confirmation of the creditors without appreciating the fact that only ledger account of the next F.Y. is given which was not signed by the person duly authorized to do so nor was it confirmed?”

5. Whether the Ld. CIT(A) was right in deleting the addition on account of closing balances of creditors and non-confirmation of the creditors when the initial onus was upon the assessee to submit justification, confirmation and latest addresses of the sundry creditors?”

6. The Ld. CIT(A) erred on the facts and circumstances of the case and in law in deleting the addition Rs. 2,21,146/- on account of disallowance of prior period expenses?”

7. The Ld. CIT(A) erred on the facts and circumstances of the case and in law in restricting the addition Rs. 24,00,000/- to Rs. 11,20,000/- on account of rent paid without appreciating the fact that no TDS has been deducted on the rent paid?”

8. The Ld. CIT(A) has erred in not appreciating the facts that the assessee has evaded the taxes by resorting to colourable device as is evident from the facts of the case and the transactions carried by it.

9. The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing.”

5. With regard to Ground no. 1, arising out of the addition of Rs. 1,78,870/- on account of interest paid for which AO had alleged that no TDS has been deducted. The Ld. CIT(A) has deleted the same on the basis that assessee has not claimed these interests payments as expenditure / deduction. There appears to be no error in the conclusion of CIT(A) in deleting this addition.

6. The 2nd ground arising out of deletion of the addition on account of advertisement expenses for which revenue alleges that service tax deducted was not deposited in Government treasury. The Ld. CIT(A) has considered the fact that the assessee has established that service tax was not debited in the P & L Account as it was directly transferred by way of contra entry into the account of M/s Mail Today Newspapers Pvt. Ltd. to whom payment was made including the service tax of Rs. 1,28,750/- thus there was no liability to deposit the service tax upon the assessee. We find no error in the findings of the Ld. CIT(A).

7. As with regard to Ground no. 3 arising out of deletion of the addition of Rs. 78 lacs made by the AO on account of disallowance of salary paid to directors on which the TDS deducted was not

deposited in Government Account within stipulated period. In this regard, the Ld. CIT(A) taken into consideration that Form 16 of the directors, in which tax deducted has been deposited with interest and penalty. The Ld. CIT(A) has also considered the fact that section 40(a)(i) is not applicable in the case of salary payment to resident of India. We find no error in the finding of the Ld. CIT(A).

8. Ground no. 4 and 5 arising out of deletion of addition made on account of closing balance of creditors and on account of non-confirmation of the creditors. The Ld. CIT(A) has deleted the same on the basis that the payments received are for booking for flats from different parties. The payments were received through normal banking channel and these amounts were not creditors for expenses as such, thus, the order of CIT(A) is sustained.

9. In regard to Ground no. 6, arising out of deletion of the addition on account of prior period expenses. It comes up that CIT(A) has taken into consideration the computation of the income to concluded that the assessee has added back prior period expenses in the computation of total income. Thus, there was no

justification to make the addition again. There is no error in the finding of the Ld. CIT(A).

10. Ground no. 7 & 8 arise out of restriction of the addition of Rs. 24 lacs and Rs. 11,20,000/- on account of rent paid, for which the AO has made addition on the basis that no TDS has been deducted on the rent paid. The CIT(A) has considered the fact that the rent paid to directors was Rs. 11,20,000/- and not Rs. 24 lacs, as a rent free accommodation for which the tax was deducted and shown in Form 16A. The CIT(A) had merely restricted the addition to Rs. 11,20,000/- instead of Rs. 24 lacs on the basis that rent component to the directors was not Rs. 24 lacs but only 11,20,000/-. Thus, the grounds appear to be not based on any incorrect appreciation of facts, as otherwise, the issue is decided by the CIT(A) in favour of the revenue only.

11. In the light of aforesaid, we are of the considered view that although the assessee has failed to appear and contest this appeal, the finding of the Ld. CIT(A), based on the appreciation of the

correct set of facts, require no inference. The appeal of the revenue is dismissed.

Order pronounced in the Open Court on 13.06.2024

Sd/-
(GS PANNU)
VICE PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 13/06/2024.

Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	5.6.24
Date on which the typed draft is placed before the dictating Member	6.6.24
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	