

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.2354/Del/2023
निर्धारणवर्ष/Assessment Year: 2016-17

DEX LOGISTICS PRIVATE LIMITED, A-220, Ground Floor, Road No.6, Mahipal Pur Extn., Delhi.	<u>बनाम</u> Vs.	ACIT Circle-7(1), E-2 Block, Civic Centre, New Delhi.
PAN No.AACCD5305L		
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

Assessee by	Sh. Rajesh Mahana & Sh. Vikram Kakkar, Advocates
Revenue by	Sh. Sanjay Tripathi, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	09.05.2024
उद्घोषणाकीतारीख/Pronouncement on	21.06.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Assessee against the order of the Ld.CIT(Appeals)-NFAC, Delhi dated 28.07.2023 for the AY 2016-17 in sustaining the addition of Rs.4,53,52,844/- being the difference between AS-26 and ITR.

2. The Ld. Counsel for the assessee, at the outset, submits that appeal of the assessee was decided without providing adequate

opportunity. Ld. Counsel for the assessee submits that the assessee could not upload the evidences before the AO and also before the Ld.CIT(A) as the supporting evidences were voluminous. Ld. Counsel submits that in the absence of reconciliation and reimbursement statement the assessment was concluded leading to addition. Therefore, the Ld. Counsel submits that the assessee furnished additional evidences before the Tribunal and prays for admission of these additional evidences and to restore the appeal back to the file of the AO to consider the additional evidences and decide the issue after providing adequate opportunity to the assessee.

3. Ld. DR has no serious objection.

4. It is observed from the record before us that the assessee filed petition under Rule 29 of the ITAT Rules for production of additional evidences as under:

“APPLICATION UNDER RULE 29 OF THE INCOME TAX (APPELLATE TRIBUNAL) RULE, 1963 FOR PRODUCTION OF ADDITIONAL EVIDENCE BEFORE THE TRIBUNAL

It is respectfully submitted as under:

1. *That the Appeal of the Appellant is pending for disposal before this Hon'ble Bench of Tribunal Bench and the matter is fixed for hearing on 09.05.2024.*

2. *The Appellant had participated in the Assessment Proceedings before the Ld. Assessing Officer. However, during the assessment proceedings, the Appellant could not file detailed documents i.e. Reconciliation Statement of Form 26AS compared with Profit & Loss A/c and Reimbursement Statement since that supporting evidence were voluminous.*
3. *The above mentioned Assessment Proceedings were concluded in absence of these Reconciliation and Reimbursement Statement, however, the said Statement(s) are very significant for correct determination of Income and deletion of the Addition made as per Assessment Order U/s 143(3) of the Income Tax Act, 1961 on assumption of facts.*
4. *That the Appellant aggrieved from the Assessment Order U/s 143(3) of the Income Tax Act, 1961 dated 13.11.2018 also preferred Appeal before Hon'ble CIT-Appeals and produced documents to show that the Income declared as per Income Tax Return filed is correct and Income cannot be assumed on the basis of the TDS Deducted as reflected in Form 26 AS. It is pertinent to state that Tax Deductor has also deducted tax on the amount of expenses reimbursed, incurred on behalf of those parties while making payment to the Appellant.*

However, the Appellant could not provide all such relevant documents due to technical error in uploading voluminous data running into 15000+ pages as annexures and hence the Addition made as per Assessment Order U/s 143(3) of the Income Tax Act, 1961 dated 13.11.2018 were confirmed vide Order U/s 250 of the Income Tax Act, 1961 dated 28.07.2023, although the Order of CIT-Appeal refers to such clarification that the payer has deducted TDS on the Invoice value rather than

deducting on the commission part or the Income of the Appellant.

Thereafter, the Appellant being aggrieved from the Order U/s 250 of the Income Tax Act, 1961 dated 28.07.2023, preferred Appeal before this Hon'ble Tribunal.

5. *That the Appellant intends to place on records, abovementioned additional documents i.e. Reconciliation and Reimbursement Statement(s) which are very relevant to find out the correct facts in the form of Reconciliation Chart to demonstrate that the action of Assessing Officer and CIT-Appeal who had placed and upheld the addition on presumption basis and on account of failure of Appellant to place evidence since the said documents could not be filed before Assessing Officer during the Assessment Proceedings or Appellate Proceedings before Hon'ble CIT-Appeals since the data was voluminous and could not be attached as annexures. It may please be appreciated that the Appellant intends to file summary of reconciliation and reimbursement statements for the disposal of this appeal on merits, which may be permitted to be entertained at this stage for proper adjudication of the issues in appeal as against the assumption of facts without reference to the reconciliation statements.*
6. *That for the purpose of this application, reliance is placed upon Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 which is reproduced hereunder:*

[29 Production of additional evidence before the Tribunal - The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be

examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income- tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.]

7. *The undersigned AR craves to draw attention of this Hon'ble Tribunal to the Judgement passed by Hon'ble Supreme Court of India in case titled National Thermal Power Co. Ltd. Vs. CIT reported in (1998) 229ITR 383, wherein the Apex Court held that the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee.*

In view of the aforementioned facts and submissions, the appellant craves to pray • to allow the filing of additional documents for the disposal of the said Appeal as this Hon'ble Tribunal is the last fact-finding authority. This is also required to be placed in the interest of the justice, equity and good.”

5. On perusal of the application for admission of additional evidences show that the assessee could not upload the voluminous evidences in support of its contention that there cannot be any addition as there is no difference in AS-26 and ITR. In the absence of evidences and reconciliation the assessment was completed by making the addition which was also sustained by the Ld.CIT(A) as

the assessee could not upload the evidences even before the Ld.CIT(A). The evidences produced in the form of additional evidence before the Tribunal goes to the root of the matter without which the issue cannot be decided. Therefore, the additional evidences are admitted and the same are restored to the file of the AO for *denovo* assessment in accordance with law after providing adequate opportunity of being heard to the assessee.

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

Order pronounced in the open court on 21/06/2024

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 21/06/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi