

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 270/DEL/2024

Assessment Year: 2011-12

Enterra Consulting Services Pvt. Ltd., 24/4, Vasu Estate Canal Road, Jakhan, Dehradun-248001.	<u>Vs</u>	ACIT, Circle-8(1), New Delhi
PAN- AACCE 0499 E		
APPELLANT		RESPONDENT
Assessee represented by		Shri Neeraj Mangla, CA
Department represented by		Shri Om Parkash, Sr. DR
Date of hearing		04.06.2024
Date of pronouncement		27.06.2024

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi, dated 12.12.2023, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

“1. That the assessment order passed by Ld. AO as well as the appellate order passed by Ld. CIT(A) are bad in law and have been passed in contravention of prevailing law as well as faces of the case, therefore liable to be annulled.

2. That the notices issued u/s 148 and assessment order passed by Ld. AO are void-ab-initio invalid being issued and passed in the name of a struck-off company

3. *That the Ld. CIT(A) grossly erred in law in not providing opportunity of being heard and to file rebuttal to remand report received from Ld. AO*
 4. *That the Ld. AO grossly erred in law and in facts of the case in assessing the entire receipts of Rs 11,60,278/- appearing in Form 26AS as income of assessee without allowing deduction of any expenses incurred to earn such income.*
 5. *That the Ld. AO grossly erred in law and in facts of the case in assessing business receipts appearing in Form 26AS as unexplained cash credits u/s 68 of the Act.*
 6. *That the AO grossly erred in law and in facts of the case in not allowing TDS credit of Rs. 1,16,031/- appearing in Form 26AS despite assessing the receipts appearing therein as income of the assessee*
 7. *That the assessee company seeks leave to add, alter, modify or delete any ground of appeal during the course of appellate proceedings.”*
2. Facts of the case, in brief, are that the assessee company did not file its return of income for A.Y 2011-12. The case was reopened u/s 147/148 of the Income-tax Act, 1961 (the “Act”) on the basis that an income of Rs. 11,60,278/- had escaped assessment for A.Y. 2011-12. Before AO there was no representation on behalf of the assessee. Therefore, AO proceeded to make assessment ex parte to the assessee and vide order dated 14.12.2018 made addition of Rs. 11,60,278/- as unexplained income u/s 68 of the Act and assessed the assessee’s income accordingly. Aggrieved against it the assessee appealed to the CIT(A), who also sustained the addition. Aggrieved against this the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal, learned counsel for the assessee took us through the impugned order and submitted that a specific legal issue was raised before learned CIT(Appeals) regarding assessee company was struck off from the register of the Registrar of Companies. He contended that learned CIT(A) failed to decide this ground and erroneously dismissed the appeal of the assessee. He submitted that the issue goes to the root of the jurisdiction and validity of the order passed by the assessing authority against a non-existent entity.

4. On the other hand, learned DR submitted that against the order of Registrar of Companies the Revenue had already filed an appeal before the NCLT, therefore, the issue of striking off was under challenge. The authorities below have, therefore, rightly proceeded to frame the assessment and in sustaining the same.

5. I have heard rival contentions and perused the material available on record. There is no dispute with regard to the fact that before learned CIT(A) there was a specific ground by the assessee about the validity of assessment on the ground that the assessee company was struck off from the Registrar of Companies at the time of framing of assessment. Hence, the assessment so framed was against the non-existing entity. Undisputedly, the learned CIT(A) dismissed the appeal of the assessee by observing as under:

“5. The matter has been carefully considered. It could be seen from the facts that in this case, all the grounds raised by the appellant company

pertain to the single issue of addition of Rs.11,60,278/- on account of undisclosed income u/s 68 of the Act and the same is adjudicated as under :-

5.1. The appellant is a company and did not file any return of income for the AY 2012-13 despite receiving commission income & fees for professional & technical services amounting to Rs.11,60,278/-. Therefore the case was reopened u/s 147 of the Act and notice u/s 148 of the Act was issued to the appellant. During the assessment proceedings, the AO perused the Form 26AS of the appellant company and noted that during the FY 2010-11 relevant to the AY 2011-12, the appellant company received commission income & fees for professional & technical services from 10 parties amounting to Rs. 11,60,278/-. The AO provided many opportunities to the appellant to file return of income and explain nature & source of such income received during the year under consideration. In response, the appellant company neither filed the return of income nor furnished supporting documentary evidences to explain the nature & source of income received. Therefore, the assessment proceedings u/s 144 of the Act were completed by passing order dated 14/12/2018 wherein the addition of Rs.11,60,278/- was made as undisclosed income u/s 68 of the Act.

5.2. During the appellate proceedings, the appellant contended that he was engaged in the business to provide consultancy services for Human resources development, training and Placement, recruiters, campus Interview managers, maintenance of Data Bank, selection of Suitable Personnel & their training, Providing Information for Human Resources requirements availability in India and Abroad for all fields and also act as consultants and commission agents for this type of business. In support of its contention, the appellant furnished the written submissions, bank account statement etc. Since these were the additional documentary evidences, the same were forwarded to the AO with direction to furnish the remand report. Accordingly the AO verified the documentary evidences and submitted the remand report. The AO noted that there was no reasonable cause for failure to file the return of income. Also AO stated that the nature & source of income received remained unexplained and hence recommended to uphold the additions made during the assessment proceedings. Therefore in the absence of return of income & supporting documents, the commission income & fees for professional & technical services amounting to Rs. 11,60,278/- remained unexplained.

In view of the facts & remand report submitted by the AO, the nature & source of income earned by the appellant remained unexplained. Thus the

appellant had failed to discharge its onus under section 68 of the Act. Hence, the addition made by the AO of Rs.11,60,278/- as undisclosed income u/s 68 of the Act is confirmed. Accordingly, all the grounds of appeal are dismissed.”

6. From the above it is clear that there is no whisper about the ground taken by the assessee. The learned CIT(A) committed an error in not adjudicating the ground raised by the assessee. I, therefore, set aside the impugned order and restore the appeal to the file of learned CIT(A) to decide all the grounds taken by the assessee by way of speaking order, preferably within three months from the date of receipt of this order. Grounds are allowed for statistical purposes.

7. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 27.06.2024.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**