

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एफ", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं . 4519/दिल्ली/2018 (नि. व. 2013-14)
ITA No.4519/DEL/2018 (A.Y.2013-14)

Praveen Mittal HUF,
C-39, Sector 56, Noida, UP
PAN: CTIPS-4929-K

..... अपीलार्थी / Appellant

बनाम Vs.

Income Tax Officer,
Ward 2(4), Sector 24, Noida

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा / Appellant by : Shri R.S. Singhvi, CA
Shri Satyajeet Goyal, CA
Shri Rajat Garg, CA

प्रतिवादीद्वारा / Respondent by : Shri Vivek Vardhan, Sr.DR

सुनवाई की तिथि / Date of hearing : 08/07/2024

घोषणा की तिथि / Date of pronouncement : 08/07/2024

आदेश / ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-I, Noida [in short 'the CIT(A)'] dated 31.03.2018, for assessment year 2013-14.

2. A perusal of appeal file shows that assessment order has been passed u/s. 144 of the Income Tax Act, 1961(hereinafter referred to as 'the Act'). The Assessing Officer (AO) had issued notice u/s. 143(2) of the Act to the assessee on 04.09.2014. In response to the notice Shri Praveen Mittal, Karta attended on 12.06.2015 and sought adjournment. On the request of assessee the case was adjourned to 07.07.2015. On the said date no one attended the proceedings on behalf of the assessee. The AO adjourned the proceedings to next date and issued notice u/s. 142(1) of the Act. There was no compliance of notices issued by the AO, thereafter. The Assessing Officer was constrained to invoke the provisions of Section 144 of the Act and completed the assessment vide order dated 21.03.2016.

3. The AO made addition on following counts:

- i. Addition u/s. 68 of the Act; disallowance of cash credit Rs. 12,62,000/- ;and*
- ii. Disallowance of claim of expenditure u/s. 40a(ia) of the Act on account of non deduction of tax at source Rs. 33,18,000/-.*

4. Aggrieved, against the assessment order the assessee filed appeal before the CIT(A). Even before the First Appellate Authority the assessee failed to make out a case and discharge its onus in proving identity of the creditors. The assessee further failed to demonstrate that the provisions u/s. 194H of the Act are not attracted on the payment of commission. Consequently, the CIT(A) confirmed the additions and dismissed the appeal of the assessee.

5. Shri R.S. Singhvi appearing on behalf of the assessee submitted that the assessee is a HUF. The assessee is a small time trader of SIM cards and recharge of SIMS. The assessee was not properly represented either before the CIT(A) or the

AO. Therefore, the assessee failed to place on record documentary evidences necessary for proper adjudication of the case. He prayed that an opportunity may be allowed to the assessee to furnish fresh evidences and make submissions afresh. The Id. Counsel for the assessee undertakes to appear before the AO and cooperate in case opportunity is allowed to him to appear before the AO.

6. Per contra, Shri Vivek Vardhan representing the Department vehemently defended the impugned order. The Id. DR submitted that the assessee was granted sufficient opportunity by the AO during assessment proceedings, but the assessee failed to respond to the notices issued by the Assessing Officer. He further contended that, the CIT(A) granted opportunity to file additional evidences in First Appellate proceedings, however, the assessee failed to discharge its onus in proving creditworthiness of the creditors as well as show that case of the assessee falls under exceptions provided in section 194H of the Act.

7. We have heard the submissions made by rival sides and have examined the orders of authorities below. It is an admitted fact that the assessee did not participate in assessment proceedings; therefore, the AO had no other option but to invoke provisions of section 144 of the Act for completing the assessment. During First Appellate proceedings the assessee furnished additional evidences, the CIT(A) sought remand report from the AO on evidences filed by the assessee. The CIT(A) after examining evidences was not convinced with the submissions of the assessee, hence, upheld the addition. Before us, the short prayer of the Counsel for assessee is that the assessee was not properly represented either before the AO or the CIT(A). Therefore, an opportunity may be allowed to the assessee to again

make submissions before the AO. Taking into consideration entire facts of case and in interest of justice, without commenting on merits, we deem it appropriate to restore this appeal back to the AO for *denovo* assessment after considering the submissions of the assessee and fresh documents, if any furnished by the assessee. The AO shall grant reasonable opportunity of hearing to the assessee before passing the order, in accordance with law.

8. In the result, impugned order is set aside and appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on Monday the 08th day of July, 2024.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 08/07/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI