

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

ITA No.1237/Del/2024
Assessment Year 2018-19

United Tourist Service Private Limited RZ-22, Sukhi Ram Park, Matiala Nawada, Uttam Nagar New Delhi	Vs.	DCIT, Circle-25(1) New Delhi
TAN/PAN: AABCU5838J		
(Appellant)		(Respondent)

Applicant by:	Ms. Rano Jain, Advocate Ms. Shikha Rustagi, Advocate		
Respondent by:	Shri Amit Katoch, Sr.DR		
Date of hearing:	08	07	2024
Date of pronouncement:	25	07	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['CIT(A)' in short] dated 31.01.2024 arising from the assessment order dated 31.03.2021 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 143(3A) & 143(3B) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2018-19.

2. As per the grounds of appeal, the assessee has challenged the addition of Rs.77,31,182/- to the return of income of the assessee by invoking provisions of Section 40(a)(ia) of the Act.

3. When the matter was called for hearing, the Id. counsel for the

assessee submitted at the outset that the assessee-company is engaged in the business of travels and transport and paid hiring charges to vendors who are said to be small vendors and do not possess more than 10 vehicles. The Id. counsel further submitted that the payments made to such vendors are within the specified limits provided under Section 194C which do not require any deduction of tax at source. A list of vendors along with PAN were provided to the AO. The AO however did not find the explanation offered to be satisfactory. Based on disclosure made in column No.21(ii)(B) of the Tax Audit Report, the AO concluded that the Assessee neither deducted TDS under Section 194C nor deposited the tax with the Govt. The AO thus held that the Assessee has committed default towards non deduction and non-remittance on sum of Rs.2,57,70,608/-. A disallowance of Rs.77,31,182/- was carried out under Section 40(a)(ia) of the Act attributable to such default. The Id. counsel submitted that against the assessment order, the first appellate order is passed *ex-parte* without opportunity to the assessee.

4. The Id. counsel adverted to an affidavit dated 6th July, 2024 administered on oath by Shri Sushil Dagar, Director of the assessee-company, to submit that the Income Tax matter of the assessee company was looked after by counsel Mr. Mukul Gupta and his e-mail id and phone number was noted in appeal memo filed before CIT(A). The notices of hearing were plausibly issued through e-mail Id of the previous counsel. The relationship with the previous counsel turns sour and due to such dysfunctional relations with previous counsel, the assessee was not made privy to the ongoing proceedings before the CIT(A) resulting in *ex-parte* order. The Id. counsel submitted that failure to attend before the CIT(A) is not deliberate but because of non-communication of notices so issued by the First Appellate Authority to the assessee. The Id. counsel also pointed out that the assessee has a *prima facie* strong case on merits to justify non-

applicability of Section 40(a)(ia) attributable to alleged default in TDS with reference to Section 194C of the Act. The ld. counsel urged for restoration of matter back to the file of CIT(A) for fresh determination of issue in accordance with law after giving proper opportunity to the assessee.

5. The ld. DR, on the other hand, relied upon the first appellate order.

6. In the light of submission made on behalf of the assessee and in the light of affidavit filed giving reason for non-compliance before the CIT(A), we are convinced that it is a fit case for re-appreciation of factual matrix in the light of the prevailing law after giving proper opportunity to the assessee while determining the issue. The assessee has sufficiently demonstrated the reasons for non-compliances before the CIT(A) resulting in *ex-parte* decision. The explanation appears plausible. Thus, without any expression on merits, the order of the CIT(A) is set aside and the matter is restored back to the file of the CIT(A) for fresh determination in accordance with law after giving proper opportunity to the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 25th July, 2024.

Sd/-
[SUDHIR PAREEK]
JUDICIAL MEMBER

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: 25th July, 2024
Prabhat

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)

4. CIT
5. DR

Assistant Registrar