

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

	ITA NO. 2715/Del/2024	
	A.YR. : 2015-16	
Shree Dhama Infrastructure Private Limited, C-12/114/116, 1 st Floor, D.B. Plaza, RDC, Raj Nagar, Ghaziabad Uttar Pradesh – 201 002 (PAN: AAOCS4571C)	VS.	ACIT, Circle-2(1)(1), Ghaziabad
(APPELLANT)		(RESPONDENT)

Appellant by : Shri Saurabh Gupta, Adv. &
Shri Pushkar Pandey, Adv.
Respondent by : Shri Yogesh Nair, Sr. DR.
Date of hearing : 11.09.2024
Date of pronouncement : 12.09.2024

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(Appeal)/NFAC, Delhi dated 25.10.2023, relating to assessment year 2015-16 on the following Grounds:-

- 1. Because, order of Ld. CIT(A) is bad in law and against the facts and circumstances of the case.*
- 2. Because, ld. CIT(A) erred in dismissing the appeal summarily on the line of in limine, without providing proper opportunity of being heard as no notice of hearing was received on mail/sms,*

assessee came to know about the ex-parte order only on routine checking by counsel of portal in April, 2024.

- 3. Because, ld. CIT(A) further erred in without adjudicating any grounds, grounds are dismissed summarily without any opportunity of being heard thus order is contrary to provisions of section 250 of the Act.*
- 4. Because, without prejudice to above and in alternative, addition of Rs. 96.84 lakhs is without considering submissions and recording incorrect facts.*

Therefore, it is very respectfully prayed that this Hon'ble Court may kindly be pleased to quash the orders of Ld. Lower authorities with the directions as deemed fit.

2. Briefly stated facts are that the assessee is a company and has not not filed its return of income even though the total income exceeded the maximum amount which is not chargeable to income tax income, for the period relevant to assessment year under consideration. In this case, there is information on AIMS module of ITBA under the head "Multi Year NMS" that the assessee has entered into significant financial transactions i.e. "Payment to Contractor u/s. 194C amounting to Rs. 4,30,46,638/-" during the Financial Year 2014-15 relevant to assessment year 2015-16. Further, the case of the assessee was reopened and a notice u/s. 148 of the Act was issued on 21.03.2021 which was sent through registered email id of the assessee. The Assessee has filed the return of income in response to the notice u/s. 148 of the Act on 11.11.2021. Further, a notice u/s. 143(2) of the Act was issued to the assessee on 22.11.2021. In response to this, the assessee has filed reply on 12.12.2021. Then, a notice u/s. 142(1) of the Act alongwith reason was issued on 14.12.2021. Further, another notice u/s. 142(1) of the Act alongwith

questionnaire was issued on 12.01.2022 to file its reply by 19.01.2022. In response to this, the assessee has filed reply on 28.01.2022. The reply filed by the assessee dated 12.12.2021 and 28.01.2022 has been considered but found not tenable, AO noted that as the assessee has not justified its claim with documentary evidences by the above reply. AO further noted that on perusal of the records available, it is noticed that the assessee had contract receipts of Rs. 4,30,46,638/- during the year under consideration. The assessee has not substantiated its claim with documentary evidences. However, it cannot be ignored that the assessee must have incurred certain expenditure to earn contractual income. Therefore, estimating income at the rate of 25% of the total contract receipts which comes to Rs. 1,07,61,600/- (25% of Rs. 4,30,46,638/-) is treated as total business income of the assessee. In this case, as the assessee has already shown the income as per profit and loss account of Rs. 10,77,432/-. Hence, the difference between the estimated income and income offered for taxation of Rs. 1,07,61,660/- - Rs. 10,77,432/-) is Rs. 96,84,228/- was added back to the total income of the assessee and assessed the income of the assessee at Rs. 1,07,61,660/- vide assessment order dated 29.03.2022 passed u/s. 147 read with section 144B of the Act.

3. Against the aforesaid action of the AO, assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 25.10.2023 confirmed the action of the Assessing Officer, as assessee has failed to offer any explanation / supporting documentary evidences in support of the grounds of appeal filed by it.

4. Aggrieved with the above Ld. CIT(A)'s order, assessee is in appeal before us.

5. We have heard both the parties and perused the records.

6. Upon careful consideration, we find that in the instant case Ld. Counsel of the assessee submitted that the last notice of hearing sent by the Ld. CIT(A) was not received by the assessee. Hence, assessee could not canvas the case. Hence, he prayed that an opportunity may be given to the assessee to appropriately canvass the appeal before the Ld. CIT(A). Accordingly, in the interest of justice, we remit back the issues to the file of the Ld. CIT(A) with the directions that Ld. CIT(A) shall consider the issues in dispute, afresh, after giving adequate opportunity of being heard to the assessee. Assessee is also directed to fully cooperate with the Assessing Officer during the proceedings.

7. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced on 12/09/2024.

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar