

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A': NEW DELHI  
BEFORE  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER  
ITA No. 2984/Del/2023, (A.Y.2018-19)**

ATS Infrastructure Ltd. 711/92, Deepali Nehru Place, New Delhi <b>PAN No:AADCA0609B</b>	Vs .	DCIT Circle-1(1) New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Ved Jain, Adv & Ms. Uma Upadhyay, Adv
Respondent by	Ms. Amisha S. Gupa CIT(DR)

Date of Hearing	23/10/2024
Date of Pronouncement	06/11/2024

**ORDER**

**PER YOGESH KUMAR U.S., JM :**

This appeal is filed by the Assessee against the order of Ld. CIT(A)/National Faceless Appeal Centre ["NFAC" for short], dated 09/10/2023 for the Assessment Year 2018-19.

2. The grounds of Appeal are as under: -

*"1. On the facts and circumstances of the case, the order passed by the learned Commissioner Income Tax (Appeals), Income Tax Department ((CIT(A), ITD), National Faceless Appeal Centre (NFAC) is bad, both in the eye of law and on the facts.*

*2. On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in passing the order ex-*

*parte without providing the reasonable opportunity of being heard to the assessee in clear violation of the principal of natural justice*

*3. On the facts and circumstances of the case, the order passed by the Ld. CIT(A), ITD is bad in the eyes of law and on facts as the same has been passed without giving any finding on the merits of the case.*

*4. (1) On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in confirming the addition of Rs. 6,34,52,730/- on account of GST and Service Tax payable invoking the provisions of Section 43B of the Income Tax Act*

*(ii) That the above disallowance has been confirmed despite the fact that these amounts have not been routed through Profit & Loss account and not claimed as deduction and therefore, provisions of Section 438 are not applicable.*

*(iii) That the above disallowance has been confirmed ignoring the various judicial precedents in this regard.*

*5. On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in confirming the disallowance of Rs 27,83,384/- made by the AO on account of delay in deposit of employees contribution towards Provident fund invoking the provision of Section 36(1)(va) of the Income Tax Act.”*

3. Brief facts of the case are that, an assessment order came to be passed u/s 143(3) read with Section 144B of the Income Tax Act, 1961 ('Act' for short) by computing the income of the Assessee at Rs. 13,97,37,360/- as against the returned income of Rs. 7,35,01,250/-. The Assessee preferred an Appeal before the Ld. CIT(A) by challenging the said Assessment Order. The Ld. CIT(A) vide order dated 09/10/2023, dismissed the Appeal filed by

the Assessee. Aggrieved by the order of the Ld. CIT(A) dated 09/10/2023, the Assessee preferred the present appeal on the grounds mentioned above.

4. The Ld. Counsel for the Assessee submitted that the order impugned has been passed in violation of principles of natural justice, though the Assessee has requested for adjournment on the date of hearing, the same has been rejected by the Ld. CIT(A) and passed the order of dismissal of Appeal, thus submitted that the order of the Ld. CIT(A) deserves to be set aside.

5. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities, sought for dismissal of the Appeal of the Assessee.

6. We have heard both the parties and perused the material available on record. During the appellate proceedings, the Ld. CIT(A) issued two notices on 25/01/2023 and 25/09/2023. However, the Assessee had requested for adjournment on both the dates. The Ld. CIT(A) passed the order impugned by placing the Assessee ex-parte. However, the Ld. CIT(A) has not decided the Appeal on its merits. Considering the fact that the order impugned has been passed in violation of principles of natural justice and the Ld. CIT(A) has not decided the issues involved in the Appeal on its merit, we remand the matter to the file of the Ld. CIT(A) to decide the Appeal afresh on its merit after providing sufficient opportunity of being heard to the Assessee.

7. In the result, the Appeal of the Assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 06<sup>th</sup> November, 2024

Sd/-

**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 06/11/2024

*R.N, Sr. PS*

Sd/-

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI