

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH.S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.7351/Del/2018
Assessment Year: 2011-12

ACIT Circle – 20 (1) New Delhi	Vs.	Proptiger Realty Pvt. Ltd. D-12, 1st Floor, Sector-3, Gautam Budh Nagar, Noida PAN No.AABCI5915L
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Harpreet Kaur Hansra, Sr. DR
Respondent by	None

Date of hearing:	12/11/2024
Date of Pronouncement:	21/11/2024

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the revenue is directed against the order of the Commissioner of Income Tax (Appeals)-XXVI, New Delhi [hereinafter referred to as "CIT(A)"] vide order dated 07.09.2018 pertaining to A.Y. 2014-15 pertaining to arises out of the assessment order dated 22.12.2016 under section 143(3)r.w.s. 144 of the IT Act, 1961 [hereinafter referred as 'the Act'].

2. The revenue has raised following grounds of appeal :-

1. On the facts and circumstances of the case, the Ld.CIT(A) has erred in law and on facts in deleting the addition Rs. 9,31,13,272/- made by the assessing officer on account disallowance of 1/5th of expense (1/5th Rs. 46,55,66,360/- = Rs. 9,31,13,272/-) ignoring the fact that assessee had failed to produce documentary evidences of the expenses despite of providing numerous opportunities during the assessment proceedings.

2. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law in deleting the addition of 20% expenses by ignoring the fact that AO has clearly mentioned in his remand report that some of invoices produced by the assessee as proof in support of its contention, were found unsigned and also the quantum of expenses claimed by the assessee was much more than the bills & invoices.

3. None appeared on behalf of the assessee. We have heard the Ld. DR and perused the material available on record. The bench decided to proceed to decide the issue with the assistance of the ld DR.

4. The brief facts of the case are that the assessee filed its return of income declaring total income at Nil. The case was selected for scrutiny a notice u/s. 143 (2) of the Act was issued on 31.08.2015. Thereafter notice u/s. 142 (1) of the Act, along with questionnaire was issued on 12.07.2016. In response to the notices no one appeared nor any documents were filed. The AO observed as under :-

“from the records it is amply clear that in spite of numerous opportunities given to the assessee non one attended proceedings till date. Hence, I am satisfied that provisions of section 1 (b) and 1(c) of the IT Act, 1961 are attracted in this case and assessment is made to best of judgment.

5. Resulting, theAO has made the total addition of Rs13,56,51,900/- on account of un explained income and penalty proceedings were alsoinitiated u/s. 271 (1) (c) of the Act. Aggrieved by the order of the AO, the assessee has filed the appeal before LdCIT(A) who vide his order dated 07.09.2018 has partly allowed the appeal of the assessee. Aggrieved by the order of the CIT(A) the revenue is in appeal before us.

6. The CIT(A) has observed as under : -

vii. The appellant submitted the details with the AO subsequent to the remand. It was submitted that all the details were requisitioned by the Assessing Officer in the proceedings of Remand Report, were duly furnished and in view of the same. These expense details go to the root of proceedings, hence are bound to be considered. It was contended that the assessee company got the accounts audited and the items of income and expenditure were part of audited account and certified by the Chartered Accountants. The action of adhoc disallowance @ 20% out of numerous expenses is not justified nor reasoned absent any specific findings on the defects in the appellant accounts. Ld AR also relied on the judgement of CIT vs Paradise Holidays (2010) 325 ITR 13 (Delhi High Court) where it has been held that when the accounts are audited, the burden of proof is on the AO to prove that such accounts are incorrect or incomplete or the method of accounting is defective and only in that eventuality any adverse inference can be drawn.

View of the above, on the facts and in absence of any specific defects in the appellant count, the adhoc disallowance @ 20% of various expenses is directed to be deleted.

viii. Ground 7 is on account of disallowance of provision for doubtful of Rs.1,80,07,787/- and other provisions of Rs.34,54,599/-. The same has been suo motu disallowed by the Appellant. The action of the AO resulted in double addition. The same is therefore directed to be deleted.

In the result, the appeal is partly allowed s per decision above.

7. We have heard the Ld. DR and perused the relevant material available on record. The Ld CIT(A) has called for the remand report from the AO. The AO has made the addition on the one fifth of the expenses which was rightly added by the AO. We find that the Ld CIT(A) has wrongly deleted the addition made by the AO. In view of the above discussion the appeal of the revenue is liable to be allowed ex parte for statistical purpose.

8. In the result the appeal of the revenue is allowed for statistical purpose.

Order pronounced in the open court on 21.11.2024.

Sd/-

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

NEHA, Sr. PS
Date:-.11.2024

Sd/-

**(SUDHIR KUMAR)
JUDICIAL MEMBER**