

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER**

**ITA No. 497/Del/2019
Assessment Year: 2014-15**

North India Infratech Pvt. Ltd. A-129, Ashok Vihar, Phase-II, Delhi. PAN No. AACCN4943N	vs	ACIT Circle 18(2) New Delhi.
APPELLANT		RESPONDENT

Assessee by	Sh. H.C. Parashar, Adv. Sh. Sanjay Jain, CA
Revenue by	Ms. Rinku Singh, Sr. DR

Date of Hearing	28.03.2019
Date of Pronouncement	01.04.2019

ORDER

PER SHRI BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-6, Delhi dated 18.12.2018 for AY 2014-15, challenging the orders of the authorities below in confirming the addition of Rs. 16,37,409/- u/s 37 of the I.T. Act, addition of Rs. 85,821/- on account of short term capital gain and addition of Rs. 19,65,584/- u/s 14 of the Act on account of income from other sources.

2. Briefly the facts of the case are that assessee is a Private Limited Company and filed return of income declaring total income at Rs. 73,13,140/- and declared income u/s 115JB at Rs. 73,43,685/-. The AO called for certain details which the assessee produced time to time. The assessee company is dealing in trading in shares, debentures and other investments. During the year under consideration, the assessee has earned income from business or profession and income from capital gains. The AO observed from the profit and loss account that assessee has not earned any income from the business. However, the assessee has claimed income amounting to Rs. 90,21,939/- from short term capital gains, interest from late payments and interest from FDR, as other income shown in the profit and loss account. The assessee has claimed employee benefit expenses, payment to auditors, bank charges, contract and hire charges, professional fee, Demat charges, interest on loan, interest on shares and miscellaneous expenses etc. in a sum of Rs. 16,37,409/-. Out of total expenses assessee has also claimed an expense of Rs. 7 lakhs paid to M/s Metropolitan Enterprises on account of contract and hire charges. The AO on verification found that this concern was registered with the Department on 29.04.2014 but present status is shown to be cancelled. The Inspector reported that no such entity exists at the given address. The AO, therefore, issued show cause notice to the assessee as to why these expenses should not be disallowed as there were no business carried out during the year and these expenses are not related to the

business. The assessee filed reply before AO which is reproduced in the order in which the assessee explained that interest on late payment of Rs. 15 lakhs was received from M/s Enrich Finance & Securities Ltd. of the various meetings held with NSE for recovering the outstanding dues from the broker. Interest on shares of Rs. 4,48,954.71 was paid to the broker for buying shares on credit, salary, demat charges, interest on loan and STT were all related to earning the short term capital gain. Although there were no business activities carried out during the year, the assessee had a tough time recovering his own money from the broker. There are certain set of expenses which are inherent and relatable for the existence of the company. The company being a separate entity has to maintain its office, staff and pay audit fees etc. These expenses are necessary and unavoidable for a company to exist. Therefore, disallowance of the expenses is wholly unjustified. The AO, however, did not accept explanation of the assessee because there was nil income from business and profession and made addition of Rs. 16,37,409/- by disallowing the above expenses.

3. The AO observed from the profit and loss account that assessee has earned an amount of Rs. 70,56,354/- from short term capital gain. The assessee has earned this amount from trading of equity shares through its broker M/s Enrich Fin & Securities Ltd. The AO issued notice to this company u/s 133(6) of the Act who replied that the assessee has actually earned Rs. 71,42,175/- from short term capital gain, therefore, assessee was

found to have shown less short capital gains amounting to Rs. 85,821/- which was added to the income of assessee.

4. The AO further noted that assessee has earned an amount of Rs. 4,65,584/- as interest from FDR and interest on late payments of Rs. 15 lakhs. The assessee submitted before AO that interest on late payments of Rs. 15 lakhs was received from M/s Enrich Fin & Securities Ltd. of the various meetings held with the NSE for recovering the outstanding dues from the broker. The reply of the assessee was not accepted because assessee has not earned any income from business activity, therefore, amount of Rs. 19,65,584/- was treated as income from other sources.

5. The assessee challenged all the three additions before Ld. CIT(A). The Ld. CIT(A) noted that several notices were sent to the assessee for disposal of the appeal but either no one attended the proceedings, notices returned unserved, some time adjournment was sought and ultimately there was no compliance. The Ld. CIT(A) in absence of assessee and in absence of any material on record dismissed the appeal of the assessee in default.

6. After considering the rival submissions, we are of the view that the matter requires reconsideration at the level of the AO. The Ld. CIT(A) noted in the impugned order that assessee company is dealing in trading of shares, debentures and other investments and during the year under consideration, assessee has income from business and profession and income from capital gains. The assessee claimed certain statutory expenditure which

were incurred for maintaining existence of the assessee. In our view such statutory expenses are allowable deduction even if assessee earned any business income or not being assessee a corporate entity. Many times there may be a loss also but the assessee would be entitled for deduction of the expenditure if the same are incurred wholly and exclusively for the purpose of business. The AO without giving any specific reasons disallowed the expenses because there was nil income from business and profession. This itself is not a valid reason. Further, Ld. Counsel for assessee submitted that since the assessee has to remain in business and has to maintain its existence, therefore, considering the nature of business of assessee, it has to incur expenses for business purposes. The explanation of assessee has not been considered in proper perspective. The AO shall have to verify statutory expenses incurred by assessee company. The AO also made addition on account of difference in capital gains. The AO did not record in the assessment order, if information received u/s 133(6) from M/s Enrich Fin & Securities Ltd. was supplied to the assessee for its comments. Therefore, without confronting the adverse material to the assessee, such an addition could not be made and matter requires reconsideration. Similarly, the AO while making the addition on account of income from other sources did not consider the explanation of the assessee that interest on late payment was received from M/s Enrich Fin & Securities Ltd. after meeting held with NSE for recovering the outstanding dues from the broker. The claim of assessee was

denied because no business activity was carried out. The AO did not address the issue properly, whether, it was compensation in nature or what was the nature of the interest on late payment received, whether, it was contractual or otherwise. It, therefore, appears that on all the three additions, the AO did not appreciate the explanation of the assessee in proper perspective. Therefore, matter requires reconsideration at the level of the AO particularly when Ld. CIT(A) did not decide the appeal on merits. The Ld. CIT(A) in absence of assessee simply dismissed the appeal of assessee for default. In view of the above discussion, we set aside the orders of the authorities below and restore all the above three additions to the file of AO with direction to redécide the same issues in the light of explanation of assessee and material on record. The AO shall give reasonable sufficient opportunity of being heard to the assessee.

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

Order pronounced in the open court.

Sd/-

(O.P. KANT)

ACCOUNTANT MEMBER

Dated: 01.04.2019

*Kavita Arora

Sd/-

(BHAVNESH SAINI)

JUDICIAL MEMBER

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	28/03/2019
Date on which the typed draft is placed before the dictating Member	28/03/2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	01.04.19
Date on which the fair order comes back to the Sr. PS/PS	01.04.19
Date on which the final order is uploaded on the website of ITAT	01.04.19
Date on which the file goes to the Bench Clerk	01.04.19
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	