

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

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT
&
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No. 2010/Del/2019
Assessment Year: 2010-11**

Safety Plus Power Ltd. A-52, 2 nd Floor, Nirman Vihar, New Delhi. PAN No. AABCE8687P	vs	ACIT Circle 22(1) New Delhi.
APPELLANT		RESPONDENT

Assessee by	Shri Salil Kapoor, Advocate Shri Sumit Lal Chandani, Advocate
Revenue by	Shri N.K. Bansal, Sr. DR Shri S.S. Rana, CIT (DR)

Date of Hearing	14.08.2019
Date of Pronouncement	29.08.2019

ORDER

PER SHRI N.K. BILLAIYA, A.M.

This appeal by the assessee is preferred against the order of the CIT(A)-8, New Delhi dated 23.01.2019 pertaining to AY 2010-11. The grievance of the assessee reads as under:

1. *"The Ld. CIT(A) erred in law and on the facts of this case by treated the share application money of Rs. 6,73,30,000/- and unsecured loan of Rs. 1,01,50,000/- as unexplained u/s 68 of the IT Act as there is no copy of notices or order received by the assessee.*
2. *The Ld. CIT(A) erred in law and on the facts of this case by*

disallowing the expenses on estimated basis without considering our submission and documents.

3. *The Ld. CIT(A) erred in law and on the facts of this case by not considering the submissions of the appellant that as per section 68 of the Income Tax Act, 1961.*
4. *The Ld. CIT(A) erred in law and on the facts of this case in upholding the order of the Ld. AO and deciding that the appellant is in contravention of the provisions of section 68 of the Income Tax Act, 1961.*
5. *That the order u/s 250 of the Income Tax Act, 1961 passed by the Ld. CIT(A) is bad in law and void ab-initio.*
6. *Without prejudice to the above grounds of appeal, the appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of appeal, before and during the course of hearing of this appeal, as consider fit and necessary.*
7. *That the AO/CIT(A) acted in contravention to the principles of Natural Justice by passing an order, without providing the Appellant a reasonable opportunity of being heard.*
8. *That the notice issued u/s 148 and the assessment order passed u/s 147/143(3) on 20.12.2017 of the Income Tax Act, 1961 are illegal, bad in law and without jurisdiction.*
9. *That the proceedings initiated u/s 147/148 of the Act are invalid for want of jurisdiction as the pre-conditions for initiation of the said proceedings as stipulated in section 147 of the Act are not satisfied.*
10. *That the notice u/s 148 is issued only on the basis of information from investigation wing without any independent application of mind. There is no independent application of mind and reasons recorded are in routine manner.*

11. *That the alleged approval u/s 151 of the Act is illegal, bad in law as same is given without application of mind.”*

2. At the very outset, the Counsel for the assessee drew our attention to the grievance raised vide ground no. 7 and pointed out that the assessee could not file certain direct evidences during the course of the assessment proceedings and the same evidences when filed before the CIT(A) were not accepted by the CIT(A). The Counsel prayed that the matter should be remitted back for fresh adjudication on the basis of the direct evidences available with the assessee.

3. The DR vehemently opposed this submission of the assessee and stated that sufficient opportunities were given to the assessee during the course of the scrutiny assessment proceedings and the assessee should not be allowed to refer to the evidences which he could have filed before the AO. Referring to the findings of the CIT(A), the DR pointed out that even before the CIT(A) no proper application was made for the admission of additional evidences under Rule 46A of the IT Rules. The DR concluded by saying that the matter should not be remitted back.

4. We have given a thoughtful consideration to the orders of the authorities below. The assessment order dated 20.12.2017 is framed u/s 147 read with section 144 of the Act. A perusal of the assessment order shows that though the AO has given a couple of

opportunities but none attended the assessment proceedings which prompted the AO to frame the assessment ex-parte.

5. When the matter was reiterated before the CIT(A) in its grounds of appeal as mentioned in Form No. 35 the assessee had raised a specific ground that it is willing and ready to provide all the required documents as required by the ACIT on 24.11.2017. We find that the AO has not given any opportunity after 24.11.2017 and has framed the assessment order ex-parte.

6. We further find that though the assessee had filed the documents before the CIT(A) but the same were not accompanied by any application for the admission of additional evidences under Rule 46A of IT Rules.

7. The CIT(A) referring to various judicial decisions came to the conclusion that since sufficient opportunities were given to the assessee the evidences cannot be admitted. Thereafter, the CIT(A) confirmed the additions on the basis of the findings of the AO.

8. We are of the considered view that technicalities should not come in the way of administration of justice. There may be many reasons because of which the assessee could not attend the assessment proceedings and to mitigate the lapses, the assessee did file the evidences before the CIT(A) but without any application for the admission of additional evidences. Such technical lapses should not come in way of justice and, therefore, in the interest of justice and fair play, we remit the issues to the files of the CIT(A).

The assessee is directed to furnish all the evidences before the CIT(A) and the CIT(A) is directed to admit all the evidences and decide the issue afresh after giving a reasonable and sufficient opportunity of being heard to the assessee. Since, we have remitted the matter before the CIT(A) for fresh adjudication, we do not find it necessary to dwell into the other grounds raised by the assessee.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(A.D. JAIN)
VICE PRESIDENT

Dated: 29/08/2019

*Kavita Arora

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Copy forwarded to:

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

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	19.08.2019
Date on which the typed draft is placed before the dictating Member	19.08.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	29.08.19
Date on which the fair order is placed before the Dictating Member for pronouncement	29.08.19
Date on which the fair order comes back to the Sr. PS/PS	29.08.19
Date on which the final order is uploaded on the website of ITAT	29.08.19
Date on which the file goes to the Bench Clerk	29.08.19
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	