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IN THE INCOME TAX APPELLATE TRIBUNAL DELHI 'C' BENCH
BEFORE SHRI I.C. SUDHIR , JM & SHRI A.N. PAHUJA, AM

ITA no.2700/Del/2012 Assessment year : 2008-09		
HHS India Pvt. Ltd., 284, Sultan Sadan, L-3, Westend Marg, Saidulajaib, New Delhi-110030	**V/s.**	Income-tax Officer, Ward-12(4), New Delhi
[PAN : AAACH3681B]		

(Appellant)		(Respondent)

Assessee by	None
Revenue by	Shri Satpal Singh, DR

Date of hearing	02-08-2012
Date of pronouncement	02-08-2012

O R D E R

AN Pahuja:- This appeal filed on 1-06-2012 by the assessee against an order dated 2-04-2012 of the ld. CIT(A)-XV, New Delhi, raises the following grounds:-

1. "*That the Revenue has erred in law and on facts in treating the amount paid to M/s Jamuna Enterprises by the way of a business transaction as a loan.*
2. *That the Revenue has erred in law and on facts in disallowing ₹` 80,083/- on account of travel expenses.*
3. *That the Revenue has erred in law and on facts in disallowing electricity expenses amounting to ₹` 85,319/-.*
4. *That the Revenue has erred in law and on facts in adding the amount of ` ₹3,667/- which pertains to the difference in closing balance of amount receivable from M/s Heritage Resorts Pvt. Ltd. as per their books and as per our books of Accounts.*
5. *That the Revenue has erred in passing the order without giving an adequate opportunity to the assessee company.*
   The assessee company craves leave to add/alter/amend the grounds of Appeal at the time of hearing."

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2. At the outset, none-appeared on behalf of the assessee nor submitted any request for adjournment. Considering the nature of issues and findings of the ld. CIT(A), the Bench decided to dispose of the appeal after hearing the ld. DR.

3. Adverting first to ground no.5 in the appeal, facts, in brief, as per relevant orders are that return declaring nil income filed on 29-09-2008 by the assessee, after being processed u/s 143(1) of the Income Tax Act,1961[hereinafter referred to as the 'Act'), was selected for scrutiny with the service of a notice u/s 143(2) of the Act issued on 06-08-2009. During the course of assessment proceedings, the Assessing Officer [AO in short] noticed that that the assessee advanced a loan of `₹. 5 lacs to M/s Jamuna Enterprises Pvt. Ltd. To a query by the AO, seeking share holding pattern of M/s Jamuna Enterprises Pvt. Ltd. and the assessee, the latter replied that Shri. Prem Patnaik had a share holding of 23.37% as on 31-03-2007 & 22.11 % as on 31-03-2008 in the assessee company while he had share holding of 66.14% in M/s Jamuna Enterprises Pvt. Ltd as on 31-03-2007 & 31-03-2008.To a further query by the AO, regarding deemed dividend, the assessee replied that it has given advance of `₹5 lacs for business purposes. However, the AO did not accept the submissions of the assessee and treated the amount as loan falling within the provisions of sec.2(22)(e) of the Act and rejected the claim of the assessee that the transaction was in the nature of business transaction.

4. Further, on perusal of agreement between the assessee and M/s Heritage Resorts P Ltd., the AO noticed that expenditure in relation to professional services were to be borne by M/S Heritage Resorts P Ltd.. However, on perusal of details of expenses, it was found that an amount of `₹80,083/- had been claimed by the assessee, being the amount incurred by Ms. Cristina Patnaik to find out new products for the boutique of M/s Heritage resorts. Since the amount had been incurred in relation to earning of professional income, which had nothing to do with the business of the assessee, the AO disallowed the amount.

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4.1. Besides, the AO disallowed electricity expenses of ₹`85,319/- out of total of ₹`1,89,598/- attributable to premises, sublet to three other parties and ` ₹3,667/- on account of non-reconciliation of closing balance in the case of Heritage Resort Pvt. Ltd. vis-a-vis- books of the said company.

5.. On appeal, none-appeared on behalf of the assessee despite issuance of notice dated 11-11-2011 and 22-12-2011. Accordingly, the ld. CIT(A), uphold the findings of the AO as under :-

> *"As is evident from the above chart, the appellant was given the opportunity on various dates but there has been no compliance as such. In these circumstances, I hold that the appellant had no evidence to substantiate the claims raised in the grounds of appeal.*
>
> *Hence in view of above, on the basis of detailed findings and reasons given by the Assessing Officer in his assessment order, I uphold the addition made to the extent of Rs. 1,69,069/-."*

6. The assessee is now in appeal before us against the aforesaid findings of the ld. CIT(A). The ld. DR merely relied upon the impugned order.

7. We have heard the ld. DR and gone through the facts of the case. As is apparent from the aforesaid observations in the impugned order, the ld. CIT(A) dismissed the appeal without even analyzing the issues or recording his specific findings on the said issues raised in the grounds of appeal before him . A mere glance at the impugned order reveals that the order passed by the ld. CIT(A) is cryptic and grossly violative of one of the facets of the rules of natural justice, namely, that every judicial/quasi-judicial body/authority must pass a reasoned order, which should reflect application of mind by the concerned authority to the issues/points raised before it. The application of mind to the material facts and the arguments should manifest itself in the order. Section 250(6) of

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the Act mandates that the order of the CIT(A) while disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. The requirement of recording of reasons and communication thereof by the quasi-judicial authorities has been read as an integral part of the concept of fair procedure and is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimizes arbitrariness in the decision-making process. Hon'ble jurisdictional High Court in their decision in Vodafone Essar Ltd. Vs. DRP,196 Taxman423(Delhi) held that when a *quasi judicial* authority deals with a lis, it is obligatory on its part to ascribe cogent and germane reasons as the same is the heart and soul of the matter and further, the same also facilitates appreciation when the order is called in question before the superior forum. We may point out that a 'decision' does not merely mean the 'conclusion'. It embraces within its fold the reasons forming basis for the conclusion.[Mukhtiar Singh Vs. State of Punjab,(1995)1SCC 760(SC)].As already observed, the impugned order suffers from lack of reasoning and is not a speaking order on any of the issues for which additions were made by the AO. In view of the foregoing, especially when the ld. CIT(A) have not passed a speaking order on various issues raised in the appeal before him, we consider it fair and appropriate to set aside the order of the ld. CIT(A) and restore the matter to his file for deciding the aforesaid issues, afresh in accordance with law, after allowing sufficient opportunity to both the parties. Needless to say that while redeciding the appeal, the ld. CIT(A) shall pass a speaking order, keeping in mind, inter alia, the mandate of provisions of sec. 250(6) of the Act. With these observations, ground no. 5 in the appeal is disposed of. As a corollary, ground nos. 1 to 4 in the appeal do not survive for our adjudication at this stage

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8. No additional ground has been before us, accordingly this ground is dismissed. No other argument or submission was made before us.

9. In result, appeal is allowed but for statistical purposes.

Order pronounced in open Court

Sd/-
(I.C. SUDHIR)
(Judicial Member)

Sd/-
(A.N. PAHUJA)
(Accountant Member)

Copy of the Order forwarded to:-

1 Assessee
2. Income-tax Officer, Ward-12(4),New Delhi
3. CIT concerned.
4. CIT(A)-XV, New Delhi
5. DR, ITAT,'C' Bench, New Delhi
6. Guard File.

BY ORDER,

Deputy/Asstt.Registrar
ITAT, Delhi