

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 3415/DEL/2017 (A.Y. 2013-14)

AND

I.T.A. No. 3416/DEL/2017 (A.Y. 2014-15)

(THROUGH VIDEO CONFERENCING)

M/s Lalitpur Power Generation Co. Ltd., B-10, Sector-3, Noida, Uttar Pradesh (APPELLANT)	Vs	ACIT (TDS), A-2D, 1 st Floor, Room No. 110, Sector 24, Noida. (RESPONDENT)
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Appellant by	None
Respondent by	Sh. Umesh Takyar, DR

Date of Hearing	05.01.2021
Date of Pronouncement	05.01.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the order dated 27/03/2017 passed by CIT(A)- I, Noida for Assessment Year 2013-14 and A.Y. 2014-15.

2. The grounds of appeal are as under:-

“Ground No. 1

The Ld. Commissioner of Income Tax (Appeals)-I, Noida {hereinafter referred to as ‘Ld. CIT(A)}, has erred in law and on the facts and in the circumstances of the case in passing an ex-parte order and dismissing the appeal of the appellant, thereby confirming the order dated 26.05.2015 u/s

154/201(1)/201(1A) of the I.T. Act, 1961 passed by the Assistant Commissioner of Income Tax (TDS), Noida {hereinafter referred to as 'A.O.'}.

Ground No. 2

The Ld. CIT(A) has erred in law and on facts of the case by passing an order without providing proper/adequate opportunity of being heard to the appellant and putting forth the evidences/ documents in support of its arguments which is against the principles of natural justice.

Ground No. 3

The Ld. CIT(A) has erred in law and on facts of the case in mechanically confirming the order of the A.O. without deciding the case on merits and so, the order passed by the Ld. CIT(A) is not a speaking order.

Ground No. 5

The Ld. CIT(A) has erred in law and on facts of the case by passing an order without considering the first proviso of section 201(1) of the I. T. Act read with Rule 31ACB of the Income Tax Rules, 1962, thereby confirming the order passed by the A.O.

Ground No. 6

The appellant craves leave to add, amend, alter or omit any of the above grounds of appeal as the circumstances may warrant on or before the date of hearing. ”

3. We are firstly taking the appeal for A.Y. 2013-14. The assessee is engaged in the business of generation of power by setting up of 3 X 660 MW Super Critical Thermal Power Plant in District Lalitpur of Uttar Pradesh. In order to set up the aforesaid Thermal Power Plant, the assessee had availed services of erection, installation, insurance, testing and commissioning from Bharat Heavy Electricals Limited (BHEL) on which TDS @ 2% u/s 194C of the Income Tax Act, 1961 has been deducted. Further, the assessee had also incurred expenses towards rent of Plant & Machinery on which TDS @ 2% u/s 194-I of the Act has been deducted. Accordingly, the assessee has filed its quarterly e-TDS returns for all the four quarters. A survey u/s 133A of the Act was conducted at the premises of the

assessee on 19.06.2014. The ACIT(TDS), Noida issued summons and notices to the assessee to check the correct applicability of TDS provisions and in response to the same, the assessee filed all the required details in the manner called for. Thereafter, the Assessing Officer passed order u/s 201/201(1A) of the Act and held that the assessee was liable to deduct TDS @ 10% u/s 194J of the Act on the services of testing and commissioning availed from BHEL instead of TDS @ 2% u/s 194C of the Act and so, the assessee had short deducted tax at source on aforesaid services. Accordingly, the Assessing Officer calculated an amount of Rs. 2,27,04,170/- on account of short deduction of tax at source on services of testing and commissioning from BHEL. The Assessing Officer further held that the assessee was liable to deduct TDS @ 10% u/s 194-I of the Act on the rental payments instead of TDS @ 2% u/s 194-I of the Act and so, the assessee had short deducted tax at source on rent. Accordingly, the Assessing Officer calculated an amount of Rs. 55,020/- on account of short deduction of tax at source on rent.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT (A) dismissed the appeal of the assessee.

5. At the time of hearing none appeared on behalf of the assessee despite giving requisite notices. Therefore, we are proceeding the present appeal filed by the assessee on the basis of assessment order and the order of the CIT(A).

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard Ld. DR and perused the material available on record. From the perusal of the order of the CIT(A), it can be seen that the order of the CIT(A) is ex-parte order and the CIT(A) has not decided the matter on merit. Considering the totality of the facts of the case and interest of justice, we deem it proper to restore the issue to the file of the CIT(A) with the direction to grant one final opportunity to the assessee to represent his case and decide the issue as per fact

and law. The assessee is also hereby directed to appear before the CIT(A) and present its case failing which the CIT(A) is at liberty to decide the issue as per law on merit. The appeal of the assessee being ITA No. 3415/Del/2017 for A.Y. 2013-14 is partly allowed for statistical purpose. Since, ITA No. 3416/Del/2017 for A.Y. 2014-15 is also emerging from the same order of the CIT(A) to that of A.Y. 2013-14, this appeal is also partly allowed for statistical purpose.

8. In result, both the appeals of the assessee are partly allowed for statistical purpose.

9. Order is pronounced in the open court in presence of both the parties on 05th January, 2021.

Order pronounced in the Open Court on this 05th day of January, 2021.

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

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated : 05/01/2021
*R. Naheed, Sr. PS **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	05.01.2021.
Date on which the typed draft is placed before the dictating Member	05.01.2021.
Date on which the typed draft is placed before the Other Member	05.01.2021.
Date on which the approved draft comes to the Sr. PS/PS	05.01.2021.
Date on which the fair order is placed before the Dictating Member for pronouncement	05.01.2021.
Date on which the fair order comes back to the Sr. PS/PS	05.01.2021.
Date on which the final order is uploaded on the website of ITAT	05.01.2021.
Date on which the file goes to the Bench Clerk	05.01.2021.
Date on which the file goes to the Head Clerk	