

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

**BEFORE SH. N.K.SAINI, ACCOUNTANT MEMBER  
AND  
SH. K.N.CHARY, JUDICIAL MEMBER  
ITA No. 4730/Del./2016 : Asstt. Year : 2012-13**

Indiamart Intermesh Ltd. 1 <sup>st</sup> Floor, 29-Daryaganj, Netaji Subhash Marg New Delhi PAN: AAACI5853L	Vs	DCIT Circle-12(1) New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

**Appellant by : None  
Respondent by : Sh. Arun Kumar Yadav, Sr. DR**

<b>Date of Hearing : 20.12.2017</b>	<b>Date of Pronouncement : 26.12.2017</b>
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**ORDER**

**PER N.K. SAINI, A.M.**

This is an appeal filed by the assessee against the order dated 11.07.2016 of the CIT(A), New Delhi. Following grounds have been raised in this appeal:

*“1. That the order of CIT(A) dismissing the assessee’s appeal is bad in law.*

*2. In the facts and the circumstances of the case, the Ld. CIT(A) erred in dismissing the appeal filed by the assessee without considering the grounds on merits which is unjustified, illegal and against the provision of the Act.*

*3. In the facts and the circumstances of the case, the Ld. CIT(A) erred in dismissing the appeal without verifying the facts as to whether the assessee had actually received the notice of hearing or not and without giving the*

*proper opportunity to appellant, which is unjustified, bad in law and against the principles of natural justice.*

*4. Without prejudice to above, the CIT(A) erred in law and facts in not adjudicating the issues raised before him on merits with regard to ESOP expenses on ex-parte basis.”*

2. Facts of the case, in brief, are that the assessee e-filed its return of income on 22.09.2012 declaring total loss at Rs. 58,92,55,842/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Later on the case was selected for scrutiny. The AO made an addition of Rs. 32,42,741/- on account of disallowance of Employee Stock Option Plan Compensation.

3. Being Aggrieved the assessee carried the matter to the Ld. CIT(A) who dismissed the appeal of the assessee by observing as under :-

*“2. The case was fixed for hearing on 16/11/2015 and the notice was served by the speed post on the appellant. Nobody appeared on that date or after that so far. It is clear that the appellant is not interested in pursuing the matter.”*

Now the assessee is in appeal.

4. During the course of hearing, nobody was present on behalf of the assessee neither any adjournment was sought. We, therefore, proceeded ex- parte qua the assessee and the appeal has been disposed off, after hearing the ld. DR who supported the impugned order passed by the ld. CIT(A) and stated that as the assessee did not appear before the ld. CIT(A), therefore, the appeal was rightly dismissed.

5. We have considered the submission of the ld. DR and the material available on record. In the present case, it is noticed that the ld. CIT(A) dismissed the appeal by passing the impugned order on 11.07.2016 by observing that the case was fixed for hearing on 16.11.2015 and the notice was served by the speed post on the assessee. However, nothing is brought on record to

substantiate that before passing the impugned order on 11.07.2016, any notice was served upon the assessee for hearing on the said date. It is also noticed that the Id. CIT(A) has not adjudicated the issues raised by the assessee on merit. It is well settled that nobody should be condemned unheard as per the maxim “Audi Alteram Partem”. We, therefore, deem it appropriate to set aside the impugned order and remand the case back to the file of the Id. CIT(A) to be adjudicated afresh in accordance with law, after providing due and reasonable opportunity of being heard to the assessee.

6. In the result, the appeal of the assessee is dismissed.

(Order Pronounced in the Open Court on 26/12/2017).

Sd/-  
(K.N.Chary)  
**JUDICIAL MEMBER**

Sd/-  
(N. K. Saini)  
**ACCOUNTANT MEMBER**

**Dated:26 / 12/2017**

**\*B. Rukhaiyar\***

Copy forwarded to:

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

**ASSISTANT REGISTRAR**

		Date	<u>Initial</u>	
1.	Draft dictated on	21.12.2017		
2.	Draft placed before author	22.12.2017		
3.	Draft proposed & placed before the second member			
4.	Draft discussed/approved by Second Member.			
5.	Approved Draft comes to the Sr.PS/PS			
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			