

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

I.T.A. No.1712/DEL/2018

Assessment Year: 2009-10

Raghunandan Infra Projects Pvt. Ltd., C/o S. Jain & Associate, 84, Darya Ganj, New Delhi.	v.	ITO, Ward-20(4), New Delhi.
TAN/PAN: AACCR 8878A		
(Appellant)		(Respondent)

Appellant by:	Shri Ved Jain, Adv., Shri Ashish Goel, CA & Shri Sanchit Jain, CA		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	05	12	2018
Date of pronouncement:	01	01	2019

ORDER

This appeal by the Assessee has been directed against the order of Id. CIT(A)-XXV, Delhi dated 29th September, 2017 for the Assessment Year 2009-10.

2. Briefly, facts of the case are that the assessee company filed its return of income on 30th September, 2009 for assessment year under appeal declaring 'Nil' income. Subsequently, information was received from the office of DIT (Investigation), New Delhi mentioning therein that the search operation was carried out in the case of Shri Surendra Kumar Jain group of cases wherein after intensive and extensive enquiry and examination of document seized during the course of search it has been noticed that the said group is involved in providing accommodation entries to the persons which were named in the report. The

assessee company also figured in the list as one of the beneficiaries of the accommodation entries. The notice u/s.148 of the IT Act was issued, the copy of reasons recorded u/s.148 were supplied to the assessee. The assessee in response thereto submitted that original return filed may be treated as return filed in response to the notice u/s.148 of the IT Act. The Assessing Officer referred to the seized document in the assessment order and after calling explanation of the assessee made addition of Rs.30 lac on account of unexplained credit u/s.68 of the IT Act in respect of amount received as share capital from M/s. Shalini Holdings Ltd. and M/s. AD Fin Capital Services (India) Pvt. Ltd. The Assessing Officer also made addition of Rs.54,000/- on account of commission expenses for obtaining accommodation entries. The assessee challenged the reopening of the assessment as well as above addition before ld. CIT(A).

3. Ld. CIT(A) noted in the impugned order that notices have been issued to the assessee at the address given in the appeal papers. However, the same notices have been received back unserved with the comments that no such firm at the address. Ld. CIT(A) therefore observed that the notices have been received back unserved either the assessee had left the premises or had given a wrong address, therefore, assessee could not be served at the address. Ld. CIT(A), therefore, decided the appeal of the assessee on merits. Ld. CIT(A) noted that assessee had neither given any evidence nor any reasoning in support of such claim and illegality have been pointed out in reopening of the assessment. Similarly, it was noted that no evidence and material

have been given to challenge the addition on merits, therefore, appeal of the assessee has been dismissed.

4. The assessee in the present appeal has challenged the order of the ld. CIT(A) in passing the ex-parte order without giving opportunity of being heard, the reopening of the assessment and making the additions on merit.

5. I have heard learned Representative of both the parties and perused the material on record. Ld. counsel for the assessee reiterated the submissions made before the Assessing Officer as well as filed the written submission to highlight that reopening of the assessment is bad in law and that addition on merit is without any basis. Detailed paper book is also filed in which certificate have been given that all the documentary evidences are available on record by the Assessing Officer. On the other hand, learned Department Representative has strongly relied upon the order of the Assessing Officer.

6. After considering the rival submissions, I am of the view that matter requires reconsideration. The assessee has given the same address for the purpose of service in the appeal papers as was given before the ld. CIT(A). The observations of the ld. CIT(A) clearly show that the notices issued for hearing of the appeal before the ld. CIT(A) have not been served upon assessee. No attempt has been made to serve the assessee personally through the process server of the Department. Therefore, the appellate order is passed without giving opportunity of being heard to the assessee in violation of principle of natural justice. The ld. CIT(A)

then decided the appeal on merit merely by observing that the assessee has neither given any evidence or material or reasoning as to how reopening of the assessment is bad in law and as to how additions on merit are unjustified. Ld. CIT(A) did not verify from the assessment record that all the evidences are part of the record of the Assessing Officer. Therefore, even if ld. CIT(A) wanted to decide the appeal of the assessee *ex parte* on merit, in such circumstances, the assessment record could have been summoned for deciding the appeal of the assessee on merits. Ld. CIT(A) noted that neither the assessee nor the Departmental Officer appeared at the time of hearing of appeal, therefore, none of the documentary evidences on record have been considered by him at appellate stage while dismissing the appeal of the assessee without giving opportunity of being heard to the assessee. The gist of the submission of the ld. counsel for the assessee had been that the re-assessment order is passed completely without application of mind by the Assessing Officer and that all the documentary evidences have been filed on record to prove that assessee entered into genuine transactions with the parties. Whatever statements were recorded by the Department were not subjected to cross-examination on behalf of the assessee. All these issues raised in the written submission have not been dealt either by the Assessing Officer or by the ld. CIT(A). Since no findings of fact have been recorded by the authorities below on merit on all the issues and that, no opportunity have been given to the assessee to argue the appeal on merit at appellate stage, therefore, the entire matter requires reconsideration. I, therefore, without going into the merits of the

claim of the assessee, set aside the impugned order and restore the entire matter to Ld. CIT(A) with the direction to re-decide the appeal strictly on merit as per law by giving reasonable/sufficient opportunity of being heard to the assessee. The Assessee is directed to file copy of the written submission and the copy of the paper book filed before the Assessing Officer for his perusal and decision as per law.

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

Order Pronounced in the open Court on 1st January, 2019.

Sd/-

**[BHAVNESH SAINI]
JUDICIAL MEMBER**

DATED: 1st January, 2019