

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

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

I.T.A. No.4313/DEL/2018
Assessment Year: 2008-09

Sonia Kapoor, C/o M/s. AVC & Co, CAs, 5/c, 2 nd Floor, Opp. Lierty Cinema, New Rohtak Road, New Delhi.	v.	ITO, Ward-3(4), NOIDA.
TAN/PAN: AFRPK 9664A		
(Appellant)		(Respondent)

Appellant by:	Shri Virender Chauhan, CA.		
Respondent by:	Shri S.L. Anuragi, Sr. D.R.		
Date of hearing:	15	11	2018
Date of pronouncement:	28	01	2019

ORDER

The aforesaid appeal has been filed by the Assessee against the impugned order dated 31.01.2018 passed by the Commissioner of Income Tax (Appeals)-I, NOIDA for the quantum of assessment passed u/s.143(3) of the IT Act, for the Assessment Year 2008-09. The assessee is mainly aggrieved by order of the ld. CIT(A) which has been *ex parte* without deciding the issues on merit and has also challenged the addition of Rs.26,83,750/- on account of Short-Term Capital Gain.

2. Before us, learned counsel submitted that, here in this case the assessee's case was reopened vide notice dated 31.03.2015 issued u/s.148, on the ground that assessee had received bogus receipt on sale of shares.

During the course of assessment proceedings, assessee has categorically denied any kind of sale of shares of M/s. Rutron International Ltd. However, the Assessing Officer without any material on record to rebut assessee's categorical denial, has assessed short-term capital gains in the hands of the assessee and also charged the interest.

3. Ld. CIT(A) has decide the appeal *ex parte* without even proper service of notice. Accordingly, he submitted that matter should be restored back to the file of the ld. CIT(A) to be decided a fresh.

4. On the other hand, learned Department Representative too admitted that matter can be restored back to the file of the ld. CIT(A) for deciding the issues afresh.

5. In view of the fact that ld. CIT(A) has dismissed the assessee's appeal *ex parte* for want of prosecution, therefore, in the interest of justice, I set aside the impugned order and remand back the entire issues back to the file of the ld. CIT(A), who shall decide the issue afresh after serving proper notice of hearing, not only the validity of reopening u/s.147/148 and validity of service of notice by Assessing Officer but also addition of Rs.26,83750/- on account of Short Term Capital Gain on merits after considering the assessee's contention. Needless to say, the ld. CIT(A) shall give due and effective opportunity of hearing to the assessee to represent her case.

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

Order pronounced in the open Court on 28th January, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 28th January, 2019

Pkk