

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A ": NEW DELHI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No.4999/Del/2016
(Assessment Year: 2010-11)

Anil Kumar, 92, Pochan Pur Village, Najafgarh, New Delhi PAN: BERPK6473H	Vs.	ITO, Ward-43(5), New Delhi
(Appellant)		(Respondent)

Assessee by :	Ms. Archana Singh, CA
Revenue by:	Smt Naina Soin Kapil, Sr. DR
Date of Hearing	29/04/2019
Date of pronouncement	29/04/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-15, New Delhi dated 19.08.2016 for the Assessment Year 2010-11.
2. The assessee has raised the following grounds of appeal:-
 - “1. *That the learned Assessing Officer (hereafter AO) has totally erred in law and on facts by Assesses Has Not Filed The Return The Share Transaction Has Been As Gross Profit Purchases Have Not Been Considered. There Was another Addition of Rs 13,00,000.00 As unexplained Credit received in the accounts, As above stated the client*
 2. *The computation made by the AO resulting in determination of taxable income of Rs. 1,10,40,369/- is wrong and bad in law.*
 3. *The consequent tax computation by applying the maximum marginal rate is wrong and bad in law and is highly disputed and should be cancelled.*
 4. *The interest u/s 234A.BC is not at all livable as tax liability of my assesses is NIL.*
 5. *The above grounds are without prejudice to one and another.”*
3. Brief facts of the case shows that assessee is an individual who entered into share transaction through Elite Stock management Ltd Mumbai amounting to INR 9 74036924 during financial year 2009 – 10 and it was also gathered that assessee has not filed his return of income for assessment year 2010 – 11 and therefore the notice u/s 148 of the income tax act was issued on

17/1/2014 to file the return of income within 30 days. The assessee did not file any return of income. Further the learned assessing officer issued 7 notices u/s 142 (1) of the income tax act which remained unreplied. The assessee did not comply with the any of the opportunities given by the learned assessing officer and therefore on the perusal of the record available in the office of the learned assessing officer it was noted that as assessee has indulged in the said transaction amounting to INR 9 74036924/- and further no details has been furnished by the assessee he made an addition of 1% of the net profit amounting to INR 9 740369/-. The learned assessing officer further noted that as per the AIR information available on record the assessee has deposited cash of INR 13 Lacs in his having savings account maintained with the HDFC bank. Therefore it was also added under section 68 of the income tax act. The learned assessing officer further noted satisfaction about the concealment of the particular of the income u/s 271 (1) © of the income tax act. Consequently the assessment order on 20/3/2015 was passed u/s 147 read with section 144 of the income tax act determining the total income of the assessee at INR 1 1040369/-.

4. The assessee preferred an appeal before the learned CIT – A – 15, New Delhi. He passed an order on 19/8/2016 dismissing the appeal stating that appellant does not wish to pursue the appeal. Therefore assessee aggrieved with the order of the learned CIT – A preferred appeal before us.
5. The case was fixed for hearing today however an adjournment application was moved by CA Archana Singh stating that senior counsel has gone out station for bank audit and therefore in adjournment was sought for 20 – 25 days. We do not find any reason to grant adjournment to the assessee as in the present case has been decided by the learned CIT – A holding that assessee does not want to pursue the appeal. The learned CIT – A has not decided the issue on the merits of the case. According to the provisions of section 251 (1) (a) the power of the learned CIT appeal in an appeal against an order of assessment is only with respect to confirm, reduce, enhance or annul the assessment. In view of this we set aside the appeal of the assessee back to the file of the learned CIT – A with a direction to the assessee to remain present before the learned CIT – A with all documentary

evidences and pleadings in the appeal within one month from the date of receipt of the order and thereafter on any other date informed by the learned CIT – A. The learned CIT – A after hearing the assessee may decide the appeal on merits. Even if the assessee does not remain present within the above timeline, the learned CIT – A decide the appeal on merits of the case.

6. Accordingly appeal of the assessee is allowed with statistical purposes with above direction.

order pronounced in the open court on 29/04/2019.

-Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 29/04/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi