

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI K.N. CHARY, JUDICIAL MEMBER**

ITA No.1533/Del/2016
Assessment Year: 2010-11

M/s. Timeless Infotech Pvt. Ltd., C/o - C.S. Anand & Co., 104, Pankaj Tower, 10, L.S.C. Savita Vihar, Delhi	Vs.	Income Tax Officer, Ward-25(3), New Delhi
PAN :AAACT5048E		
(Appellant)		(Respondent)

Appellant by	Shri C.S. Anand, Adv.
Respondent by	Ms. Ashima Neb, Sr.DR

Date of hearing	04.09.2019
Date of pronouncement	25.11.2019

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 17/03/2015 passed by the learned Commissioner of Income-tax (Appeals)-9, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2010-11 raising following grounds:

1. *That on the facts of the case and under the law, the Id. CIT(A) had erred in dismissing the appellant's appeal on the ground that the*

appellant had not complied with the notice issued fixing appeal for hearing.

2. *That on the facts of the case and under the law, the Id CIT(A) had denied natural justice to the appellant.*
3. *That on the facts of the case and under the law, the Id CIT(A) had erred in confirming the addition of s. 13,88,370/- made by the Id A.O.*
4. *That on the facts of the case and under the law, the addition of Rs. 13,88,370/- is not maintainable, because someone else had fraudulently executed the sale deed in respect of a Portion of land (owned by the appellant) in favour of M/s Shreya Developwell Pvt. Ltd.*
5. *That on the facts of the case and under the law, the charging of interest u/s 234 A was illegal.*
6. *That on the facts of the case and under the law, the charging of interest u/s 234B was illegal.*

2. At the outset, the Ld. counsel of the assessee submitted that the appeal was decided by the Ld. CIT(A) *ex parte* qua assessee without deciding the issue on merit. He submitted that in the Form No. 35 i.e. the form prescribed for filing appeal to the Ld. CIT(A), the address was mentioned as "C/o Mahesh Mittal (Director), A-42 Suraj Mal Vihar, Delhi -92 , i.e., residential address of the Director, who ceased to be Director of the assessee company with effect from 14/03/2014. He submitted that notice issued by the Ld. CIT(A) at above address could not reach to the assessee company. He submitted that there was no error on the part of the Ld. CIT(A), however, it was a mistake on the part of the then Director of the assessee company. The company was not aware about the fact of the non-compliance until it received notice for penalty under section 271 (1)(c) of the Act. He

submitted that the fact of civil suit filed by the assessee against the un-authorised sale transaction vide sale deed dated 23/12/2009 carried by Sh. Dinesh Chouhan could not be brought before the Ld. CIT(A). He, accordingly, submitted that the matter may be restored to the file of the Ld. CIT(A) for deciding afresh in the light of the additional documentary evidences.

3. The Ld. DR, on the other hand, submitted that the assessee failed to offer the sale transaction for Income-tax purpose and made no compliance of the proceeding before the Ld. CIT(A), therefore, the Ld. CIT(A) is justified in dismissing the appeal of the assessee.

4. We have heard rival submission of the parties and perused the relevant material on record. It is evident that the assessee did not comply the notices issued by the Ld. CIT(A) for hearing of the appeal. The assessee has explained before us that due to mistake on the part of one of the Director, who did not forward the notices to the assessee company, and therefore the assessee could not represent before the Ld. CIT(A). In view of the facts and circumstances, we are of opinion that the assessee was prevented by sufficient cause in not appearing before the Ld. CIT(A) and appeal of the assessee has been dismissed without deciding on merit. In the interest of the substantial justice, we feel it appropriate to set-aside the order of the Ld. CIT(A) and restore the appeal back to the file of the Ld. CIT(A) for deciding afresh with the liberty to the assessee to file the documentary evidences, if any, in support of its claim. Both the parties, i.e., the assessee and the Assessing Officer shall be afforded adequate opportunity

of being heard. The ground of the appeal is accordingly allowed for statistical purposes.

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

Order is pronounced in the open court on 25th November, 2019.

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

**Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

Dated: 25th November, 2019.

RK/-(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi