

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND**

MS SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A NO. 919/Del/2016

(Assessment Year : 2009-10)

<p>Smt. Pushpa Rani Kukreja, A-37, East of Kailash, New Delhi – 65 (PAN : ACYPR 7962 A)</p> <p>(APPELLANT)</p>	Vs	<p>ACIT, Circle – 18, ARA Centre, E-2, Jhandewalan New Delhi.</p> <p>(RESPONDENT)</p>
---	----	--

Appellant by	Shri Vikas Bandgali, C.A.
Respondent by	Shri Bhuvnesh Kulshrestha, CIT - D.R.

Date of Hearing	03.12.2019
Date of Pronouncement	04.12.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 30.11.2015 passed by Commissioner of Income Tax (Appeals) – 25, New Delhi for Assessment Year 2009-10.

2. The Grounds of appeal are as under:-

1. *“That the Ld. CIT(A) has not followed the procedure laid down in Instruction No. 20/2003, dated 23.12.2003 that CBDT has noticed through letter dated 19.06.2015 and passed the order u/s 250 after 15 days of last hearing. This must be viewed adversely because as per CBDT Instruction No. 20/2003, dated 23.12.2003 the appellate order should be issued within 15 days of the last hearing. The order passed by Ld. CIT(A) is unlawful, null and void. Detail of date of last hearing with CIT(A) and date of passing of order is as follows :*

<i>Date of Last Hearing</i>	<i>Date on Envelope of order passed</i>	<i>Period</i>
24.11.2015	23.12.2015	1 month

2. *That without prejudice to the above, the Ld. CIT (A) has erred in law and on facts by passing the order ex parte in response of appellate order without allowing proper and adequate opportunity through the appellant appeared.*
3. *That the Ld. CIT(A) has erred in law and on facts by making addition to the income of the assessee by taking income from school at Rs.8,00,000/- justifying the Ld. AO in addition of the same on estimated basis which is wrong and denied. Hence, the addition made to the income needs to be deleted.*
4. *That the Ld. CIT(A) has erred in law and on facts by making addition to the income of the assessee by taking income from rent at Rs.4,25,000/- justifying the Ld. AO in addition of the same on the basis of statement of Sh. O P Kukreja, husband of the assessee which is wrong and not on the basis of facts. Hence, the addition made to the income needs to be deleted.*
5. *That the Ld. CIT(A) has erred in law and on facts by making addition to the income of the assessee by taking income from interest at Rs.3,50,000/- justifying the Ld. AO in addition of the same on the basis of imaginary ground which is wrong and unjustified. Hence the addition made to the income needs to be deleted.*
6. *That the Ld. CIT(A) has erred in law and on facts by making addition of the income of the assessee at Rs. 75,00,000/- as undisclosed investment in the hands of the assessee U/s 69 of Income Tax Act, 1961 without any relevant fact. Hence, the addition made to the income needs to be deleted.*
7. *That the Assessing Officer has erred on facts and in law in initiate penalty proceeding u/s 271 (1)(c) of The Income-Tax Act, 1961 without considering the fact and law.*
8. *The appellant craves leave to add, amend, modify or alter grounds of appeal before the appeal is decided.”*

3. The assessee is an individual and a search & seizure operation u/s 132 of the Income Tax Act, 1961 was conducted at her premises on 10.02.2012, consequent to search conducted in the Aerens Group on 17.08.2011. The income was determined in the assessment order taking the income from play school in the name of Sham Rock Lotus at New Delhi at Rs.8,00,000/-, Rent received at Rs.4,25,000/-, and Interest Income at Rs.3,50,000/-. The additions were also made towards unexplained investments on the basis of documents found in the course of search at the residence of the assessee, particularly a Sale Agreement seized as Annexure A-1, pages 24 to 35, as per which the assessee had invested Rs.75,00,000/- each along with her husband and an addition of Rs.75,00,000/- was made in the hands of the assessee.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. The Ld. AR submitted that in previous assessment year as well as subsequent Assessment Years i.e. 2006-07, 2007-08, 2008-09 & 2010-11 and 2011-12 in assessee's own case on the similar facts the Tribunal has remanded the matter back to the file of the CIT(A) with a direction to grant one final opportunity to the assessee to substantiate the case. (ITA No.916, 917, 918 & 920/Del/2016 order dated 21.09.2017 and ITA No.1030/Del/2016 order dated 10.10.2019). The Ld. AR submitted that the assessee was not able to contest the case before the CIT(A), therefore, in the interest of justice, the assessee be given opportunity to plead its case on merit before the CIT(A).

7. The Ld. DR submitted that the Assessing Officer as well as CIT(A) has given ample opportunity to the assessee to submit the relevant documents as well as make proper submissions, but the same was not availed by the assessee. Therefore, the Assessing Officer was justified in making addition and

the CIT(A) correctly uphold the additions made by the Assessing Officer. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

8. We have heard both the parties and perused all the relevant materials available on record. Since in the previous assessment years as well as in the subsequent assessment years the case of the assessee was remanded back to the file of the CIT(A) to grant the opportunity to the assessee to substantiate her case on merit, the facts in the present assessment year are identical. Therefore, in the interest of justice it will be appropriate to remand back the matter to the file of the CIT(A) with a direction to grant one final opportunity to the respective assessee to substantiate her claim / case. The assessee is also hereby directed to appear before the CIT(A) without seeking any adjournment and substantiate her case failing which the CIT(A) is at liberty to decide the issue as per law. Needless to say the assessee be given proper opportunity of hearing by following principle of natural justice. Therefore, the appeal of the assessee is partly allowed for statistical purposes.

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

Order pronounced in the Open Court on the 4th day of December, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 04/12/2019
*Priti Yadav, Sr. PS **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	03.12.2019
Date on which the typed draft is placed before the dictating Member	04.12.2019
Date on which the typed draft is placed before the Other Member	04.12.2019
Date on which the approved draft comes to the Sr. PS/PS	04.12.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	04.12.2019
Date on which the fair order comes back to the Sr. PS/PS	04.12.2019
Date on which the final order is uploaded on the website of ITAT	04.12.2019
Date on which the file goes to the Bench Clerk	04.12.2019
Date on which the file goes to the Head Clerk	