

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

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 4442/Del/2019
Assessment Year: 2008-09

Jitendra Kumar S/o Sh. Satbir Singh, vs. INCOME TAX OFFICER,
H. No. 151, Vill- Laddpura, WARD-1(5), NEW DELHI
Near Indian Bank, Greater Noida
Dankaur, G.B. Nagar, U.P.
(PAN:AOOPK4133Q)
(ASSESSEE) **(RESPONDENT)**

Assessee by: None
Revenue by: Sh. Pradeep Singh Gautam, Sr. DR.

ORDER

This appeal is filed by the assessee against the Order dated 29.12.2017 passed by the Ld. CIT(A)-I, Noida, relating to Assessment Year 2008-09 on the following grounds:-

- 1. That the facts and circumstances of the case in Law, the Hon'ble CIT(Appeal) had erred in confirming the income assessed of the appellant by Ld AO at Rs. 26,30,000.00/, instead of returned income of Rs 1,09670, as such aggregate addition of Rs 26,30,000.00- please be deleted.*
- 2. That the Hon'ble CIT failed to appreciate the fact that the addition made by the Ld. Assessing officer were made without getting proper opportunity and Hon'ble CIT passed appellate order u/s 250 of Income Tax Act/1961.*
- 3. That the Hon'ble CIT (Appeal) had erred on facts and circumstances of the case and in law in making an addition of Rs. 26,30,000/ on account of unexplained cash deposited- being wholly based on conjecture and surmises and being untrue, the same must be deleted.*
- 4. Submission is not made by the Assessee during appellate assessment Ld CIT-I Noida. The unexplained income of Rs. 26,30,000.00/- was received from assessee father who had received compensation of compulsory land. The same is explained u/s 68 of the*

income tax act 1961. Therefore, there cannot be any tax liability as per u/s 68 of Income tax act 1961.

5. That the impugned assessment order is arbitrary, illegal, bad in law in violation of rudimentary principal of contemporary jurisprudence.

6. That the provisions of section 271(1) (C) are not applicable in the case of the applicant.

7. That the impugned Assessment order passed by Ld. Assessing Officer, Noida is a clear cut case of misunderstanding and wrong interpretation of Law.

2. Notice of hearing was issued to the assessee by RPAD on the address given in Form No. 36, in spite of the same assessee nor his authorized appeared nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case, I am of the view that no useful purpose would be served to issue notice again and again to the assessee on the address given by the assessee in Form No. 36. Therefore, I am disposing this appeal ex parte assessee after hearing learned DR.

3. I have gone through the impugned order passed by the learned First Appellate Authority and for the sake of convenience the impugned order dated 29.12.2017 is reproduced as under:-

"ORDER U/S 250 OF I.T. ACT, 1961

The present appeal is filed by the appellant against an assessment order dated 30.03.2016 passed by the Id. AO u/s 147/143(3) of I.T. Act, 1961 for A.Y. 2008-09 on a total income of Rs. 27,39,670/- against return of income not filed. Aggrieved by the same the appellant has preferred the present appeal.

2. The appeal of the appellant was fixed for hearing for 06.12.2016, 29.12.2016, 11.04.2017, and again for 07.09.2017. There has been no response. Neither the appellant has entered appearance nor any request for adjournment has been received. It appears that the appellant is not serious to prosecute its case, therefore, no meaningful purpose is to be served by keeping the appeal pending. In view of the persistent non prosecution of appeal

by the appellant the present appeal is dismissed for non prosecution. The impugned assessment order is confirmed."

4. After going through the aforesaid impugned order, I am of the view that learned First Appellate Authority has passed an ex parte order without providing sufficient opportunity to the assessee and impugned order is also non speaking which is not sustainable in the eye of law. Therefore, I am cancelling the impugned order dated 29.12.2017 and set aside the issues in dispute to the learned First Appellate Authority to decide the same afresh as per law after providing sufficient opportunity to the assessee.

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

Order pronounced on 06/01/2020.

**Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 06/01/2020
SH

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches