

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 9291/DEL/2019 (A.Y 2011-12)

Dikshi Lefin Portfolio Pvt. Ltd. 208, Allied House 2, Old Rohtak Road, Inder Lok, Delhi AAACD2573L (APPELLANT)	Vs	ITO Ward-7(3) New Delhi (RESPONDENT)
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ITA No. 9292/DEL/2019 (A.Y 2009-10)

Daksh Lefins Ltd. 208, Allied House 2, Old Rohtak Road, Inder Lok, Delhi AAACD4831F (APPELLANT)	Vs	ITO Ward-7(3) New Delhi (RESPONDENT)
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Appellant by	Sh. Priyanshu Singhal, CA
Respondent by	Sh. Jagdish Singh, Sr. DR

Date of Hearing	24.02.2020
Date of Pronouncement	02.03.2020

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the order dated 3/1/2019 passed by CIT(A)-3, New Delhi for Assessment Year 2011-12.

2. The grounds of appeal are as under:- **I ITA No. 9291/DEL/2019**

1. *“On the facts and circumstances of the case, the order passed by the Learned CIT(A) is bad both in the eye of law and on facts.*

2. (i) *On the facts and circumstances of the case, the learned CIT(A) has*

erred both on facts and in law in passing the order without giving assessee an opportunity of being heard in violation of principle of natural justice.

(ii) That the non-appearance before the Ld. CIT(A) was due to reasons beyond the control of the assessee.

3. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in passing the order Ex Parte without giving any findings on the merits of the case.

4. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the order despite the fact that the initiation of the proceedings under Section 147, read with Section 148, is bad and liable to be quashed as the conditions and procedure prescribed under the statute have not been satisfied and complied with.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order passed by the A.O. despite the fact that the reassessment proceedings initiated by the learned A.O. are bad in the eye of law as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are contrary to the facts.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order of the A.O. despite the fact that the reassessment proceedings initiated by the learned A.O. are bad in the eye of law as there is no independent application of mind applied by the A.O while forming belief for the purpose of recording of reasons.

7. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in confirming the action of the A.O. despite the fact that initiation of the proceedings under Section 147 read with Section 148 is bad in the absence of proper sanction from the authority as prescribed in law.

8. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition u/s 68 of the Act amounting to Rs.27,00,000/- made by AO holding the same to be income from undisclosed sources.

9. On the facts and circumstances of the case, the learned CIT(A) has erred

both on facts and in law in confirming the addition of Rs. 67,500/- on account of commission made by A.O., without there being any basis for the same.

10. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the assessee bringing on record all material and evidences to prove the identity and creditworthiness of the lenders and genuineness of the transactions.

11. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the above said addition which was made on the basis of material collected at the back of the assessee without giving it an opportunity to rebut the same, in violation of the principle of natural justice.

ITA No. 9292/DEL/2019

1. "On the facts and circumstances of the case, the order passed by the Learned CIT(A) is bad both in the eye of law and on facts.

2. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in passing the order without giving assessee an opportunity of being heard in violation of principle of natural justice.

(ii) That the non-appearance before the Ld. CIT(A) was due to reasons beyond the control of the assessee.

3. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in passing the order Ex Parte without giving any findings on the merits of the case.

4. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the order despite the fact that the initiation of the proceedings under Section 147, read with Section 148, is bad and liable to be quashed as the conditions and procedure prescribed under the statute have not been satisfied and complied with.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order passed by the A.O. despite the fact that the reassessment proceedings initiated by the learned A.O. are

bad in the eye of law as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are contrary to the facts.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order of the A.O. despite the fact that the reassessment proceedings initiated by the learned A.O. are bad in the eye of law as there is no independent application of mind applied by the A.O while forming belief for the purpose of recording of reasons.”

4. Firstly we are taking up the facts of ITA No. 9291/Del/2019. The assessee company is a NBFC company. In response, notice issued u/s 148 of the Income Tax Act, the assessee filed return of income on 15/9/2018 declaring income of Rs. 48,049/-. During the course of assessment proceedings, the assessee company was asked to explain the amount of accommodation entry of Rs. 32,00,000/- received by the company from Focus Industrial Resources Pvt. Ltd. and Saari Agro Farming Pvt. Ltd. The assessee submitted the confirmation from the Sai Agro Farming Pvt. Ltd. along with copy of ITR, balance sheet and bank statement before the Assessing Officer. The Assessing Officer made addition of Rs. 27,00,000/- u/s 68 of the Act as well as made addition of Rs. 67,500/- in respect of commission.

5. As regards to ITA No. 9292/Del/2019, the respective assessee company received Rs. 30 Lakhs from Junoon Capital Services Pvt. Ltd. against issue of shares of Daksh Lefins Ltd. The assessee submitted the confirmation from the said company along with copy of ITR, Balance Sheet and Bank Statement. The Assessing Officer treated the said amount as accommodation entry and made addition of Rs. 30,00,000/- under Section 68 of the Act. The Assessing Officer also made addition of Rs. 75,000/- on account of commission paid in cash.

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

7. The Ld. AR submitted that the CIT(A) passed ex-parte order without giving opportunity of hearing to the respective assessee. Therefore, the Ld. AR submitted that both the matters may be remanded back to the file of the CIT(A) for deciding the appeals afresh on merit.

8. The Ld. DR submitted that the despite giving several opportunities the assessee failed to appear before the CIT(A). Therefore, the order of the CIT(A) is just and proper.

9. We have heard both the parties and perused the material available on record. From the perusal of the order of the CIT(A) can be seen that the notice were issued to the assessee and on two occasions, the assessee sought time before the CIT(A). The respective assessee have not made out any case as regards to the non appearance before the CIT(A) despite giving proper opportunity. Therefore, we are imposing cost of Rs. 5,000/- in each case which should be paid by the respective assessee to the Prime Minister's relief fund. The CIT(A) has not discussed the merit of the case and passed ex-parte order. It will be appropriate to remand back this issue in entirety to the file of the CIT(A). Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The appeal of the assessee is partly allowed for statistical purpose.

10. In result, both the appeals of the assessee are partly allowed for statistical purpose.

Order pronounced in the Open Court on 02ND MARCH, 2020.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 02/03/2020
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	25.02.2020
Date on which the typed draft is placed before the dictating Member	25.02.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	02.03.2020
Date on which the final order is uploaded on the website of ITAT	02.03.2020
Date on which the file goes to the Bench Clerk	02.03.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	