

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I(2) + SMC' NEW DELHI**

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

ITA No. 8235/DEL/2018 (A.Y 2013-14)

AKS International Ltd. 403-A, 4 th Floor, Modi Tower, 98, Nehru Place New Delhi PIN: 110019 PAN: AAACA5822H (APPELLANT)	Vs	ITO Ward-2(1) C. R. Building New Delhi (RESPONDENT)
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Appellant by	Sh. Kapil Goel, Adv
Respondent by	Sh. Jagdish Singh, Sr. DR

Date of Hearing	24.02.2020
Date of Pronouncement	02.03.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 13/01/2017 passed by CIT(A)-32, New Delhi for Assessment Year 2013-14.

2. The grounds of appeal are as under:-

1. *ON THE FACTS AND CIRCUMSTANCES OF THIS CASE AND THE LAW, THE CIT (A) WAS INCORRECT AND UNJUSTIFIED IN DISMISSING THE APPEAL OF THE ASSESSEE.*

2. *ON THE FACTS AND CIRCUMSTANCES OF THIS CASE AND THE LAW, THE CIT (A) WAS INCORRECT AND UNJUSTIFIED IN COMPLETING THE APPEAL WITHOUT GIVING PROPER OPPORTUNITY RELATING TO INVALIDITY*

OR ILLEGALITY OF ACTION UNDER SECTION 143 (3).

3. ON THE FACTS AND CIRCUMSTANCES OF THIS CASE AND THE LAW, THE CIT (A) WAS INCORRECT AND UNJUSTIFIED IN UPHOLDING THE ADDITION OF RS. 10,38,563/- WITHOUT CONSIDERING AND DECIDING THE CASE OF MERIT EVEN THOUGH SUCH GROUND WAS TAKEN.

4. ON THE FACTS AND CIRCUMSTANCES OF THIS CASE AND THE LAW, THE CIT (A) WAS INCORRECT AND UNJUSTIFIED IN COMPLETING THE ASSESSMENT UNDER SECTION 144 AND THEREBY CONFIRMING THE SAME EVEN THOUGH THE CONDITIONS NECESSARY FOR COMPLETING OF SUCH ASSESSMENT HAVE NOT BEEN FULFILLED.

GROUNDS.....

1. *On the facts and circumstances of this case and the law, the CIT (A) was incorrect and unjustified in dismissing the appeal of the assessee.*
2. *On the facts and circumstances of this case and the law, the CIT (A) was incorrect and unjustified in completing the appeal without giving proper opportunity relating to invalidity or illegality of action under section 143 (3).*
3. *On the facts and circumstances of this case and the law, the CIT (A) was incorrect and unjustified in holding the notice under section 148 was served by implication even at least without mentioning and verifying the date on which the notice dated 25/03/2011 was handled over to the Postal Department for service.*
4. *On the facts and circumstances of this case and the law, the CIT (A) was incorrect and unjustified in holding that notice may be presumed to have been served without verifying of any proof of service from the postal department are from anywhere else.*
5. *On the facts and circumstances of this case and the law, the CIT (A) was incorrect and unjustified in relying on the judgement in the case of Mayavati in respect of service since the facts are completely different.*

6. *On the facts and circumstances of this case and the law, the CIT (A) was incorrect and unjustified in not holding the 148 action and thereby assessment illegal since the approval for issuing notice under section 147 has been taken from CIT whereas such approval in this case was liable to be taken from Joint Commissioner of Income Tax since the original Assessement was completed under section 143(1).*
7. *On the facts and circumstances of this case and the law, The CIT (A) was incorrect and unjustified in upholding the addition of Rs. 1,30,36,780/- without considering and deciding the case of merit even though such ground was taken.*
8. *On the facts and circumstances of this case and the law, the CIT (A) was incorrect and unjustified in holding that the assessee has raised only one ground in the appeal of non receipt of the notice under section 148 has been raised in ground no. 1 of the appeal apparent from the appeal order itself.*
9. *On the facts and circumstances of this case and the law, the CIT (A) was incorrect and unjustified in completing the assessment under section 144 and thereby confirming the same even though the conditions necessary for completing of such assessment have not been fulfilled.*
10. *On the facts and circumstances of this case and the law, the action under section 148 is illegal since the notice has been sent by the ITO 15(1) whereas I am assessed by the ITO 15(4).”*

3. The assessee Company is registered as NBFC with Reserve Bank of India and its main activities are providing loans to individuals and to the companies as well as investment in unlisted and listed shares. The assessee company is also involved in collaboration of property development. The assessee company filed return of income on 29/9/2013 declaring income of Rs. 2,00,410/-. The Assessing Officer assessed the income of the assessee at Rs. 12,38,973/- by making addition of Rs. 1,55,000/- u/s 68 of the Act and also Rs. 8,83,563/- on account of provisions of bad debts.

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

5. The Ld. AR submitted that the CIT(A) has not given opportunity of hearing to the assessee and passed ex-parte order.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. 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 none appeared before the CIT(A) despite giving several opportunity. The assessee has not made out any case as regards to the non appearance before the CIT(A). Therefore, we are imposing cost of Rs. 5,000/- which should be paid by the 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.

8. In result, appeal of the assessee is 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	24.02.2020
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	