

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-2": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No. 4059/Del/2019
Asstt. Year 2015-16

Dharampal Marketing Pvt. Ltd. 2285/5, Gali Hinga Beg, Tilak Bazar, Delhi - 110 006 PAN AAACD0471H	Vs.	ITO, Ward 7(3) New Delhi.
(Appellant)		(Respondent)

Assessee by:	None
Department by :	Shri Vinod Sharma, Sr. DR
Date of Hearing	31/12/2020
Date of pronouncement	07/01/2021

ORDER

PER R.K. PANDA, AM

This appeal filed by the assessee is directed against the ex parte order dated 3rd April, 2019 passed by Ld. CIT(A) -3, New Delhi relating to assessment year 2015-16.

2. Although a number of grounds have been raised by the assessee, these all relate to the ex parte order of the Ld. CIT(A) in

dismissing the appeal for non prosecution and thereby sustaining the addition made by the AO u/s 41(1) of the Income Tax Act.

2. Facts of the case, in brief, are that the assessee is a company and is engaged in the wholesale business of tea, chemical etc. The AO completed the assessment u/s 143(3) wherein he made addition u/s 41(1) and thereby raised a tax demand of Rs. 15,69,790/-. In appeal due to non appearance by the assessee Ld. CIT(A) in the ex parte order passed by him upheld the addition made by the AO. Aggrieved with such order of the Ld. CIT(A) the assessee is in appeal before the Tribunal.

3. Despite the service of notice, none appeared on behalf of the assessee. Therefore, this appeal is being decided on the basis of material available on record and after hearing Ld. Sr. DR.

4. A perusal of the order of the Ld. CIT(A) order shows that he has dismissed the appeal preferred by the assessee due to non prosecution by relying the decision of Hon'ble Supreme Court in the case of CIT vs. B N Bhattacharya 118 ITR 461 (SC) and the decision of the Tribunal in the case of CIT vs. Multiplan India Pvt.

Ltd. reported in 38 ITD 320 (Delhi). He has not decided the appeal on merit and the so-called decision on merit also is very cryptic in two/three lines. As per the provisions of section 250 (6) the order of the CIT(A) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision. However, in the instant case the Ld. CIT(A) has not given any reason for his decision on merits but has simply dismissed the appeal on account of non appearance which is not as per the statute. I, therefore, deem it proper to restore the issue to the file of the Ld. CIT(A) with a direction to decide the appeal on merit by passing a speaking order after giving one last opportunity to the assessee to substantiate its case. The assessee is also hereby directed to appear before the Ld. CIT(A) and substantiate its case failing which the Ld. CIT(A) is at liberty to pass appropriate order as per law. I hold and direct accordingly.

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

Order pronounced in the open court on 07/01/2021.

sd/-

**(R.K. PANDA)
ACCOUNTANT MEMBER**

Dated: 07/01/2021

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi