

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.2559/Del/2019
Assessment Year: 2015-16

Rakesh Bansal,
403, Swastik Apartments, Plot
No.2, Sec.09,
Rohini,
New Delhi.

Vs ACIT,
Circle-34(1),
New Delhi.

PAN: AAIPB2567R

(Appellant)

(Respondent)

Assessee by	:	Shri Raj Kumar Gupta, CA & Shri J.B. Sharma, CA
Revenue by	:	Shri Farhat Khan, Sr. DR
Date of Hearing	:	25.05.2021
Date of Pronouncement	:	25.05.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the ex parte order dated 26.11.2018 of the CIT(A)-12, 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 order of the CIT(A) in confirming the addition of Rs.4,22,00,498/- made by the AO u/s 68 and 69C of the IT Act, 1961.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 30th January, 2016 declaring net taxable income at Rs.87,16,680/-. During the year under consideration, the assessee has derived income from house property, salary income as director in different companies and income from other sources. The assessee is also a partner in M/s High Seas Trading Corporation. During the course of assessment proceedings, the AO noted that the assessee has claimed an exemption of Rs.4,11,45,660/- u/s 10(38) of the IT Act on account of long-term capital gain by way of trading in the scrips of ICVL Chemicals Limited. From the various details furnished by the assessee, the AO noted that the assessee has entered into the following transactions:-

<u>Date</u>	<u>Events</u>	<u>Amount (Rs.)</u>
04.01.2014	2,00,000 equity shares of M/s ICVL Chemicals Limited were purchased @ Rs.3.20 per share from M/s B G Freight Shoppe India Pvt. Ltd.	6,40,000
20.01.2014	12,500 shares of M/s B G Freight Shoppe India Pvt. Ltd. were received in Demat account of the assessee	
24.01.2014	18,750 shares of M/s B G Freight Shoppe India Pvt. Ltd. were received in Demat account of the assessee	
29.01.2015 to 10.03.2015	Sold 2,00,000 shares @ Rs. 209.2 per share through M/s India Bulls Ventures Ltd.	4,17,85,660

4. He noted that the Director of Investigation, Kolkata carried a countrywide investigation to unearth the organized racket of generating bogus entries of long-term capital gain which is claimed as exempt. The AO, therefore, confronted the same to the assessee. Rejecting the various explanations given by the assessee and relying on various decisions, the AO made addition of Rs.4,17,82,672/- u/s 68 of the IT Act. The AO further made an addition of Rs.4,17,826/- u/s 69C of the IT

Act being the expenditure incurred by the assessee as commission for earning the above income. Thus, the AO determined the total income of the assessee at Rs.5,09,17,180/- as against the returned income of Rs.87,16,680/-.

4.1 Since the assessee did not appear before the CIT(A) despite number of opportunities granted by him, the Ld. CIT(A), in the ex parte order passed by him, sustained the additions made by the AO.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The Id. Counsel for the assessee drew the attention of the Bench to page 2 of the order of the CIT(A) and submitted that the case was last fixed for hearing before the CIT(A) on 22.11.2018. However, an adjournment application was filed on that day stating that the documents, paper book and written submissions are under compilation. Although the Id.CIT(A) had stated that fresh date of hearing shall be issued in due course, however, no fresh date was received and the ex parte order was passed on 26.11.2018. The Id.CIT(A) has not informed that the application for adjournment will be rejected, rather, he informed for issue of a fresh date. He submitted that since the assessee did not get proper and reasonable opportunity for filing the paper book and submissions, therefore, in the interest of justice, the assessee should be granted an opportunity to substantiate his case either before the CIT(A) or before the AO as the Bench deems proper.

7. The ld. DR, on the other hand, strongly objected to the above submissions of the ld. Counsel. He submitted that despite number of opportunities granted, the assessee did not appear before the CIT(A) and was seeking adjournment under some pretext or the other. He accordingly submitted that the order of the CIT(A) should be upheld and the grounds raised by the assessee should be dismissed.

8. We have considered the rival arguments made by both the sides and perused the orders of the lower authorities. We find, the AO, in the instant case, completed the assessment u/s 143(3) of the Act on 29th December, 2017 determining the total income of the assessee at Rs.5,09,17,180/- as against the returned income of Rs.87,6,680/- by making addition of Rs.4,17,82,672/- and Rs.4,17,826/- u/s 69C of the IT Act from transactions in penny stock income of which was claimed as exempt u/s 10(38) of the Act. We find, the ld. CIT(A) in his ex parte order, upheld the additions made by the AO u/s 68 and 69C of the IT Act. It is the submission of the ld. Counsel for the assessee that no proper opportunity was granted by the CIT(A) and in the interest of justice the assessee should be given an opportunity to substantiate his case.

8.1 A perusal of the sequence of events as mentioned by the ld.CIT(A) at page 2 of his order gives the following details:-

S.No.	Dt. of Notice	Dt. of hearing	Remarks
1.	02.07.2018	17.07.2018	No Compliance
2.	01.08.2018	20.08.2018	A letter for adjournment was filed by the Appellant alongwith power of attorney and the case was adjourned to 06.09.2018.
3.		06.09.2018	Another letter for adjournment was filed by the Appellant and the case was adjourned to 24.09.2018.
4.		24.09.2018	No Compliance
5.	23.10.2018	22.11.2018	A letter for adjournment was filed by the Appellant on Dak Counter.

9. From the above, it can be seen that although letter for adjournment was filed by the assessee on dak counter of CIT(A) on 22.11.2018, however, there is no mention of any acceptance or rejection of the same by the Id. CIT(A). Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the CIT(A) with a direction to grant one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the CIT(A) and substantiate his case without seeking any adjournment under any pretext failing which the Id.CIT(A) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court at the time of hearing itself i.e., on 25.05.2021.

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 25th May, 2021.

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi