

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 7765/DEL/2019
[Assessment Year: 2011-12]

Shri Narender Sharma
O-43, Prem Nagar-2
Kirari, New Delhi

Vs.

The I.T.O
Ward - 37(2)
New Delhi

PAN: AZMPS 2783 D
[Appellant]

[Respondent]

Date of Hearing : 16.09.2021

Date of Pronouncement : 16.09.2021

Assessee by : Shri Ajit Sharma, Adv
Revenue by : Shri R.K. Gupta, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 13, Delhi dated 12.06.2019 pertaining to assessment year 2011-12.

2. Grievances of the assessee read as under:

"1. That the impugned order of the learned CIT (A) dated 29th June 2018 is bad in law and on facts.

2. That the Ld.CIT (A) failed to understand the case on merit and passes the order in a hasty manner. They failed to understand that the Ld. AO has taken transaction value of shares while profit and loss on such transaction are different.

3. That the Ld. AO did not calculate the correct profit and loss on sale and purchase of share transaction. They assumed that all transactions value are income of the assessee.

4. During the course of hearing some other grounds may be added, modified and withdrawn."

3. Representatives of both the sides were heard at length. Case records carefully perused.

4. Briefly stated, the facts of the case are that the Assessing Officer framed order u/s 144/147 of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] dated 11.12.2018. Return was selected for scrutiny assessment on the basis of AIR/CIB information relating to share transactions of Rs. 97,31,370/-. Statutory notices were issued and served upon the assessee but remained uncomplied. The Assessing Officer was left with no choice but to pass ex-parte order and made addition of 10% of the investment in shares at Rs. 9,37,137/-.

5. The assessee carried the matter before the ld. CIT(A) but without any success.

6. The relevant findings of the ld. CIT(A) read as under:

"4.3 An appeal in Form No. 35 was E-filed on 16.01.2019. The appellant Shri Narendra Sharma appeared stating that he had earned Rs. 94,310/- during the year. As regards the share transactions he claimed to have transacted to the extent of Rs.24,54,356/- with a loss of Rs. 2,355/-. The appellant has given no documentary proof or explanation before the AO and also not stated that no notices were received by him. This implies conscious and deliberate non compliance before the Assessing Officer. Even before the undersigned, he has taken the plea that the transactions were not in his knowledge and his relationship manager may have done it without his knowledge and even if it were in his knowledge, the treatment would have been the same. Such a reply shows the tentative, casual & non committal attitude/response of the appellant even otherwise. This submission is vague and ambiguous. There is no documentary evidence in support either. Accordingly, the argument put forth is bereft of merit and is hereby rejected. The addition of Rs. 9,37,137/- is hereby confirmed."

7. Before me, the ld. AR submitted a Paper Book containing 38 pages of documents explaining the transaction. The order of the ld. CIT(A) is completely silent on these documentary evidences. In my considered opinion, even if for some reason the assessment proceedings were not attended by the assessee but evidences were furnished before the CITA.

8. In the interest of justice and fair play, I deem it fit to restore the appeal of the assessed to the file of the Assessing Officer. The Assessing Officer is directed to examine the documents and decide the issue afresh after giving reasonable and sufficient opportunity of being heard to the assessee.

9. In the result, the appeal filed by the assessee in ITA No. 7765/DEL/2019 is allowed for statistical purposes.

The order is pronounced in the open court on 16.09.2021.

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 16th September, 2021.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	