



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "B", LUCKNOW**

[Through Virtual Hearing]

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT  
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.609/LKW/2019  
Assessment Year: 2015-16

Tanisha Agarwal 7, Shastri Nagar Lucknow	v.	ITO Range 4(5) Lucknow
TAN/PAN:AVFPA0559A (Appellant)		(Respondent)

Appellant by:	Shri P. K. Kapoor, C.A.		
Respondent by:	Shri Harish Gidwani, D.R.		
Date of hearing:	06	10	2021
Date of pronouncement:	08	10	2021

**ORDER**

**PER A.D. JAIN, V.P.:**

This is assessee's appeal against the order of the ld. CIT(A), Lucknow-2, dated 30.8.2019 for the assessment year 2015-16, raising the following grounds:

1. That the learned Commissioner of Income Tax (Appeal) II has erred in law in deciding the appeal ex-parte for non-prosecution.
2. That the learned Commissioner of Income Tax (Appeal II) has erred in law for not deciding the appeal on merits as per provision of section 250 of IT Act and is also against the principle of natural justice.
3. That the learned Assessing Officer has wrongly disallowed the claim of long term capital gain u/s 10(38) without bringing any material on records.

4. That the amount of long term capital gain of Rs.41,74,520/- has been added u/s 69A merely on suspicions and surmises.

5. That the assessment order passed is arbitrary, erroneous, without proper reason is invalid and bad in law.

2. By virtue of the impugned order, the ld. CIT(A) has dismissed the assessee's appeal for non-prosecution. The ld. CIT(A) has recorded certain dates of issuance of notice, but there is no mention as to whether notice of hearing was ever served upon the assessee.

3. Heard. We find that the CIT(A) has dismissed the appeal without providing proper opportunity to the assessee. Moreover, the ld. CIT(A) has not disposed of the appeal on merit after affording opportunity of hearing to the assessee. As such, another opportunity of hearing requires to be given to the assessee to represent his case fully before the ld. CIT(A). Even otherwise, it is trite ['S. Velu Palandar Vs. DCIT' 83 ITR 683 (Mad.) and 'Ms. Swati Pawa vs. Dy. CIT', 175 ITD 622 (Del)] and incumbent on the ld CIT(A) to decide an appeal on merit even in the absence of any representation before them.

4. In view of the above, the matter is remitted to the file of the ld. CIT(A) to be decided afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the assessee. The assessee, no doubt, shall cooperate in the fresh proceedings before the ld. CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 08/10/2021.

Sd/-  
[T. S. KAPOOR]  
ACCOUNTANT MEMBER

Sd/-  
[A. D. JAIN]  
VICE PRESIDENT

DATED:08/10/2021

JJ:

Copy forwarded to:

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

By order

Assistant Registrar