

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'SMC': NEW DELHI**

**(Through Video Conferencing)**

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

**ITA No.1492/DEL/2020  
[Assessment Year: 2016-17]**

M/s Kanshi Technovation Pvt. Ltd. Q-5/22, Housing Board Colony, Sector-7 Extension, DLF Phase-2, Gurgaon, Harayana-122001	ITO, Ward-2(3), Gurugram, Haryana-122016
<b>PAN-AAFCK7107C</b>	
Assessee	Revenue

Assessee by	Sh. Manoj Pahwa, CA
Revenue by	Sh. R. K. Gupta, Sr. DR

<b>Date of Hearing</b>	<b>11.10.2021</b>
<b>Date of Pronouncement</b>	<b>11.10.2021</b>

**ORDER**

This appeal filed by the assessee is directed against the ex-parte order dated 05.03.2020 of the learned CIT(A)-2, Gurgaon, relating to Assessment Year 2016-17.

2. Although, a number of grounds have been raised, these all relates to the ex-parte order of the Ld. CIT(A) in sustaining the various additions made by the AO and thereby determining the total income of Rs.46,92,100/- as against the returned loss of Rs.(-)28,42,518/-.

2. Facts of the case, in brief, are that the assessee is a company and filed its return of income declaring loss of Rs.(-) 28,42,518/-. The case was selected for complete scrutiny under CASS. Notice u/s 143(2) was issued on 08.08.2017 fixing the case for hearing on 25.08.2017, which was duly served on the assessee company. Thereafter, notice u/s 142(1) along with questionnaire was issued. During the course of assessment proceedings, the AO asked the assessee to explain as to why the following expenses should not be disallowed since, the assessee is doing business of trading of goods and not manufacturing of product:-

- |  |                |
|--|----------------|
| 1. Brand Advertisement Fee   | Rs.9,27,450/-  |
| 2. Branding & Publish Charges  | Rs.13,36,910/- |
| 3. Travelling Expenses   | Rs.2,93,944/-  |
| 4. Unsecured Loan of Rs.5,05,000/- in absence of any confirmation/ledger account.                              |                |
| 5. Pre-Operative Expense   | Rs.33,708/-    |
| 6. Security payable at Rs.24,00,000/- in absence of confirmation/detail.                                       |                |
| 7. Proportionate disallowance of other expenses in absence of corresponding payment through bank.              |                |
| 8. All statutory dues which was shown payable in absence of any evidence of payment of same within time limit. |                |
| 9. Any other addition, which is not admissible.  |                |

10. Sundry Creditors in absence of confirmed copy of ledger account/confirmation.

2.1. Rejecting the various explanations given by the assessee, the AO made addition of Rs.25,58,304/- on account of the first three items i.e. Brand Advertisement Fee, Branding & Publishing Charges and Travelling Expenses.

3. Similarly, the AO asked the assessee to file the complete copy of ledger account of sundry creditors. In absence of any confirmed ledger account of sundry creditors, the AO made addition of Rs.49,76,330/- to the total income of the assessee. Thus, the AO determined the total income of Rs.46,92,100/- as against the returned income of loss of Rs.(-) 28,42,518/-.

4. Since, the assessee did not appear before the Ld. CIT(A) despite number of opportunities granted. The Ld. CIT(A) in the ex-parte order dismissed the appeal filed by the assessee.

5. The Ld. Counsel for the assessee submitted that no opportunity whatsoever was granted by the Ld. CIT(A) and no notice of hearing was received by the assessee in the given address nor any mail was also received. He submitted that in

the interest of justice, the assessee should be given opportunity to substantiate its case before the Ld. CIT(A).

6. The Ld. DR, on the other hand, heavily relied upon the order of the Ld. CIT(A).

7. I have heard the rival submission and perused the records. I find the Ld. CIT(A) while proceeding to decide the appeal ex-parte has observed as under:-

*“4.1. Notice u/s 250 was issued in the penalty proceedings for the year under consideration, fixing the case for hearing on 11.12.2019, 20.1.2020, 05.02.2020, and 20.02.2020 respectively. However there was no response in response to these notice issued. No submissions were filed by the appellant during the entire appellate proceedings.*

*4.2. The aforesaid circumstances show that the appellant is not interested to pursue its appeal. In the absence of any reply from the appellant, the matter is being decided ex-parte. The maxim 'vigilantibus non-derminentibusjurasubvenunt' i.e. the law assist those who are vigilant and not those who sleep over their rights" is applicable in this case.*

*4.3. Hon'ble ITAT in ITA No. 1025-1027/Chandigarh/2005 for the AY 2002-03 in the case of M/s Chhabra Land and Housing Ltd., after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattachargee & other 118 ITR 461 [SC] held that the appeal does not mean merely filling of the appeal but effectively pursuing the same.*

*4.4. Keeping in view the aforesaid factual position, the appeal filed by the appellant is therefore decided on merits, as discussed hereunder.”*

8. A perusal of the above shows that no notice whatsoever was sent by the office of the Ld. CIT(A) before deciding the appeal and he has proceeded to decide the appeal ex-parte on the ground that notice u/s 250 was issued in penalty proceedings for the year under consideration for different dates and there was no response. It is settled proposition of law that quantum appeal proceedings and penalty appeal proceedings are distinct and separate from each other. Therefore, in absence of any service of notice by the Ld. CIT(A), he should not have proceeded to decide the appeal ex-parte. Therefore, considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the Ld. CIT(A) with a direction to grant an opportunity of being heard to the assessee and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Ld. CIT(A) and substantiate its case without seeking any adjournment under any pretext, failing which the Ld. CIT(A) is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purpose.

9. In the result, the appeal of the assessee is allowed for statistical purpose.

The Order is pronounced in the open court at the time of hearing itself i.e. today on 11.10.2021.

**Sd/-**  
**[R.K.PANDA]**  
**ACCOUNTANT MEMBER**

**Delhi;** Dated: 11/10/2021.

*Shekhar, Sr. P.S*

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi