

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.9511/Del/2019

[Assessment Year : 2011-12]

Ashu Tyagi C/o. Sanjeev Anand & Associates 77, Navyug Market, Ghaziabad Uttar Pradesh AHQPT9609R		vs	ITO Ward-1 (1) Ghaziabad, Uttar Pradesh
APPELLANT			RESPONDENT
Appellant by	Shri Sanjeev Agarwal, CA		
Respondent by	Shri Om Prakash, Sr. DR		
Date of Hearing	08.12.2021		
Date of Pronouncement	08.12.2021		

ORDER

PER KUL BHARAT, JM :

This appeal by the assessee is directed against the order of the Ld. CIT(A)- Ghaziabad dated 10/10/2019 pertaining to Assessment Year 2011-12. The assessee has raised following grounds of appeal:-

1. *"That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order u/s 147/143(3) and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged*

under the Income Tax Act, 1961.

2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in framing the impugned reassessment order u/s 147/143(3), is bad in law and against the facts and circumstances of the case.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 9,61,556/- by recording incorrect facts and findings, without considering evidences on record and without observing the principles of natural justice.*
4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the addition of Rs. 9,61,556/- without affording opportunity of being heard and allegedly on the ground that the appellant has not carried out any business activity, is bad in law and against the facts and circumstances of the case.*

2. At the outset, Ld. Counsel for the assessee submitted that the Ld.CIT(A) did not afford the reasonable opportunity to the assessee and the impugned order was passed ex-parte to the assessee. He submitted that in the interest of principle of natural justice, the assessee may be given opportunity for effective representation before the Ld.CIT (A). He prayed that the impugned order may be

set aside and the grounds may be restored to the file of the Ld.CIT(A).

3. On the contrary, Ld. Sr. Departmental Representative oppose the submissions and submitted that the Ld.CIT (A) has given sufficient opportunity to the assessee. Therefore, the assessee should not be allowed to take advantage of his own negligence.

4. I have heard the rival submissions and perused the material available on record. I find that the Ld.CIT (A) dismissed the appeal ex-parte to the assessee by observing as under:-

“5. From the above it is clear that despite several opportunities none appeared on behalf of the appellant for hearing before the undersigned and no submissions have been received. Hence the appeal filed by the appellant is liable to be dismissed for non-prosecution. In my above view, I find support from the following decisions:-

(i) in the case of CIT Vs. B.N. Bhattacharjee & Another 118 1TR 461 (relevant pages 477 & 478) wherein their Lordships have held that *the appeal does not mean merely filing of appeal but effectively pursuing it.*”

In the case of Estate of Late Tukoji Rao Holker Vs. CWT 223 ITR 480 (MP) while dismissing the reference made at the

instance of assessee in default made following observations in their order.

"if the party at whose instance the reference is made fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, this court is not bound to answer the reference.

(iii) In the case of CIT Vs. Multiplan India Pvt. Ltd. 38 ITD 320 (Del). The appeal filed by the revenue before the Tribunal which was fixed for hearing but on the date of hearing nobody represented neither the revenue applicant, nor any communication for adjournment was received. There was no communication or information as to why revenue choose to remain absent on that date. The Hon'ble Tribunal laid down the principle that on the basis of inherent power the appeal filed by the appellant can be treated as un-admitted.

6. Keeping in view of the above facts, it appears that appellant is not interested in availing the opportunities of being heard given to the appellant u/s 250(2). Therefore the appeal is being decided based on material available before undersigned. On merits of the case examination of facts reveals as under:

6.1 Ground nos. 1 to 6: The appellant has challenged the addition of Rs.

*3,50,000/- on account of unexplained investment and Rs. 6,00,000/- on account of unexplained cash deposits u/s 69 of IT Act, 1961. Examination of facts reveals that appellant failed **to** substantiate his claim that he carried on any business activity and failed to rebut the finding of negative cash in hand appearing in the cash flow drawn by the AO. Even during appellate proceedings, the opportunities given to him have not been availed to prove genuineness of business carried on by the appellant and the source of investment made by the way of cash deposits or receipt of friendly loan. Keeping in view above facts it is held that there is no need to interfere with the action of the A.O in making the above said addition. Thus, these grounds of appeal are dismissed.*

5. From the above, it is clear that the impugned order has been passed ex-parte to the assessee. Ld. Counsel for the assessee has submitted that there was a reasonable cause for none appearing before the CIT(A), he submitted that he undertakes to appear before Ld.CIT(A) and not to seek adjournment. I have given thoughtful consideration to the facts and circumstances of the present case, I am of the considered view that the assessee Company should have been given an opportunity for meaningful and effective representation on merit of the case. Therefore, I hereby set aside the impugned order and restore the grounds of appeal to the file of

the Ld.CIT (A) to decide it afresh. Needless to say, that the Ld.CIT (A) would afford reasonable opportunity to the assessee for representing his case. Grounds of appeal of the assessee are allowed for statistical purpose.

6. The appeal of the assessee is allowed for statistical purpose.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 08th December, 2021

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Dated : 08/12/2021

R. N

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI