

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E': NEW DELHI  
(Through Video Conferencing)**

**BEFORE,  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI O.P.KANT, ACCOUNTANT MEMBER**

**ITA No.4660/Del/2017  
(ASSESSMENT YEAR 2011-12)**

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| Opinder Singh Marwah<br>E-34, Lajpat Nagar-III,<br>New Delhi-110 024<br><br>PAN-AAKPM 6200G<br><b>(Appellant)</b> | Vs. | Asst. CIT,<br>Circle-32(1),<br>New Delhi.<br><br><b>(Respondent)</b> |
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|-----------------------|--------------------------------|
| Appellant By          | <b>Sh. Arun Kishore, CA</b>    |
| Respondent by         | <b>Ms. ShwetaYadav, Sr. DR</b> |
| Date of Hearing       | <b>18.11.2021</b>              |
| Date of Pronouncement | <b>09.02.2022</b>              |

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal is preferred by the assessee against order dated 6.11.2015 passed by the Learned Commissioner of Income Tax (Appeals)-18, New Delhi CIT(A)} for Assessment Year 2011-12.

2. The grounds raised by the assessee are as under:-

*1. That the order of Ld. Comm, of Income Tax (Appeals) 18 [CIT (A)] in appeal No. 119/14-15 confirming the addition of Rs.41,50,000/- made by the AO, is illegal, unjust, oppose to facts and suffers from the vice of arbitrariness.*

*2. That on the facts and circumstances of the case and in law the assessee was prevented by a reasonable cause in not been able to respond to*

notice of CIT(A) dt. 09.10.2015 for hearing of 02<sup>nd</sup> Nov, 2015, on account of change of address.

3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the addition of Rs.48,50,000/-.

4. That without prejudice to the above contention, on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in confirming the addition made by the Ld. AO, mainly on the basis of findings of the AO by referring to brief 7 liner reasoning under para 4.4 of the 16 page order.

5. That without prejudice to the above contentions, on facts of the case and in law, the Ld. CIT Appeals has erred in not carefully looking into the facts of the case, as a result of which ground No. 4 & 7 are omitted to be adjudicated while dealing with all grounds of appeal together.

6 (i) That without prejudice to the above contention, the Ld. CIT(A) & the Ld. AO have erred in making the addition, in the case of accepted history. On the vehicles sold, depreciation was allowed in the past and proportionate depreciation representing sale value of vehicles was not claimed by the appellant and is accepted by the IT Department.

(ii) That the Income Tax department cannot follow double standards i.e. accepting the sale value of vehicles for the purpose of disallowance of depreciation and at the same time, sale proceeds of same vehicles are taxed as income u/s 68.

7. That without prejudice to the above contention, the Ld. AO and the Ld. CIT(A) have erred in not appreciating the type of business from which the appellant had earned taxi hiring income of Rs.7.99

*crores, wherein purchase and sale of vehicles is normal part of trade.*

8. *That without prejudice to the above contention, on the facts and circumstances of the case and in law the Ld. AO has erred in making addition of Rs.47,00,000/- for sale of 13 cars during the year, whereas under same circumstances, during the same year, sale of another 10 cars, has been accepted. No uniform procedure has been followed while making illegal addition on this account.*

9. *That without prejudice to the above contention, on the facts and circumstances of the case, Ld. AO has erred in making an addition of Rs.1,50,000/- deposited in bank account out of cash in hand.*

10. *That without prejudice to the above contentions, on the facts and circumstances of the case, the addition u/s 68 can be made for sums found credited in the books of the assessee. Amounts credited in the savings bank account, cannot be termed as amounts credited in the books. The addition of Rs.48,50,000/- u/s 68 is an illegal addition.*

11. *That the net income of the appellant be reduced by Rs.48,50,000/-.*

3. At the time of hearing, the Ld. Counsel for the assessee moved an application for adjournment of the case praying that some time was required to collect the relevant papers and to file the paper book. However, a perusal of the order sheet entries shows that this is the second occasion when adjournment was being sought by the

assessee. Earlier also, the case had been adjourned on 04.02.2021 at the request of the assessee's counsel. It is rather strange that from 04/02/2021 to 18/11/2021, the assessee could not file the paper book. Therefore, we deem it appropriate to reject the application for adjournment and proceed with the hearing of the appeal.

4. A perusal of the order passed by the Ld. CIT (A) shows that the said order has been passed ex-parte qua the assessee. The assessee's appeal has been dismissed after the Ld. CIT(A) has duly noted in paragraph 4.1 that the assessee was given as many as five opportunities for presenting his case before the Ld. First Appellate Authority but on each of the dates either adjournment was sought or none attended. Thereafter, the Ld. CIT (A) proceeded to dismiss the assessee's appeal before him and upheld the additions made by the Assessing officer. The Ld. CIT(A) has noted in paragraph 4.4. of the impugned order that there was no cooperation from the side of the assessee and even the submissions by the assessee before the Assessing officer, during the course of assessment proceedings, were non-detailed, sketchy / unsatisfactory and that the assessee

had done precious little to prove his case at the forum of the First Appellate Authority.

5. The Ld. Sr. DR pointed out that the conduct of the assessee before the Assessing officer as well as the Ld. CIT (A) had been unsatisfactory and non-cooperative. It was submitted that the appeal before this Tribunal also deserved to be dismissed. The Ld. Authorised Representative (AR), however, took an undertaking before this Bench that if another opportunity was granted to the assessee to appear before the Ld. First Appellate Authority, the same will be availed and the assessee will fully cooperate in such proceedings by submitting all the relevant details and documents in support of its contentions.

6. Having heard both the parties and after having gone through the records, we are of the considered view that since the assessee has not even cared to file any documents before us but has only tried to delay the hearing, without providing any assistance to the Bench, the appeal of the assessee ought to be dismissed. However, considering the undertaking given by the Ld. AR in the Open Court

during the course of virtual hearing and in the interest of substantial justice, we deem it appropriate to restore this appeal to the file of the Ld. First Appellate Authority for deciding the issues afresh after giving due opportunity to the assessee to present its case. We also direct the assessee to abide by the undertaking given by the Ld. AR in this regard and fully cooperate before the First Appellate Authority, whenever so required, failing which, the Ld. First Appellate Authority shall be at liberty to proceed ex-parte qua the assessee, in accordance with law.

7. In the final result, the appeal of the assessee stand allowed for statistical purposes.

Order pronounced on 09.02.2022

Sd/-

**(O.P.KANT)**  
**ACCOUNTANT MEMBER**

Dated: 09/02/2022

PK/rkk

Copy forwarded to:

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

Sd/-

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI