

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.5393/Del/2019

(निर्धारण वर्ष / Assessment Year : 2015-16)

Avenue Homes Pvt. Ltd. 369, Ground Floor, Yojna Vihar, New Delhi	बनाम/ Vs.	ITO Ward- 3 (4) New Delhi
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AALCA3263H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	None
प्रत्यर्थी की ओर से / Respondent by :	Sh. Zahid Parvez, Sr. DR

सुनवाई की तारीख / Date of Hearing	13.06.2022
घोषणा की तारीख /Date of Pronouncement	16.06.2022

आदेश/ORDER

PER PRADIP KUMAR KEDIA, AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-1, New Delhi ('CIT(A)' in short), dated 27.03.2019 concerning AY 2015-16.

2. The assessee has raised the following grounds of appeal :-

1. *Under the facts and circumstances of the case, and as per law, the learned CIT(A) erred in upholding the Order of Assessing*

Officer, assessing the total income of the Appellant at Rs.5,57,53,560/- against returned income of Rs. 3,560/-, without giving adequate opportunity to the Appellant. The Learned CIT(A) erred in not adjudicating the grounds of appeal on merit and dismissed the appeal.

2. *The Learned Assessing Officer, on the facts of the case and as per law erred in making addition of Rs.5,57,50,000/- under section 68 of the Act on account of two unsecured loans taken by the Appellant. The Assessment was under limited scrutiny and the Assessing Officer, erred in making enquiry with respect to unsecured loans, which was not point for limited scrutiny and therefore, the action of Assessing Officer, without taking appropriate approval of appropriate Authority as per CBDT guidelines, in examining cash credits was illegal and against the said circular. The addition is consequently arbitrary and illegal.*

3. *On the facts and circumstances of the case and as per law, without prejudice to above grounds, otherwise also, addition of Rs.5,57,50,000/- is illegal as the Appellant furnish adequate confirmation and other documents with respect to unsecured loans as per law.*

3.1 *Otherwise also, the addition of Rs. 5,57,50,000/- u/s 68 of the Act is arbitrary and illegal as the Appellant was not having any source of income which emanate undisclosed income to the Appellant and therefore addition of Rs.5,57,50,000/- is against the provision of law.*

4. *That the learned CIT (A) has erred both in law and on facts in upholding the levy of interest under section 234 B of the Act which is*

to leviabie on the facts and circumstances of the case of the appellant.

5. *That the appellant craves leave to add, amend or alter any of the grounds of the appeal.*

3. When the matter was called for hearing, none attended for the assessee. Consequently, the matter was proceeded *ex parte*. It is also noticed that the CIT(A) has also passed an *ex parte* order in the absence of the assessee.

4. On perusal of the order of the CIT(A), we straightway notice that the CIT(A) has dismissed the appeal before it for want of prosecution and non attendance.

5. We straightway refer to Section 250(6) of the Act which enjoins that the CIT(A) shall state the points for determination before it and the decision shall be rendered on such points alongwith reasons for the decision. Thus, it is incumbent upon the CIT(A) to deal with the grounds on merits even in *ex parte* order. In view of Section 250 (6) of the Act, the CIT(A) has no power to dismiss an appeal on account of non-prosecution. This view is also taken by the Hon'ble Bombay High Court in case of *CIT Vs. Premkumar Arjundas Luthra HUF (2017) 297 CTR 614 (Bom.)*. A bare glance of the order of the CIT(A) shows that CIT(A) has not addressed itself on the various points placed for its determination at all and dismissed the appeal of assessee for default in non appearance. Needless to say, the CIT(A) plays role of both adjudicating authority as well as appellate authority. Thus, the

CIT(A) could not have shunned the appeal for non-compliance without addressing the issue on merits.

6. In the totality of the circumstances, we consider it just and expedient to restore the matter back to the CIT(A) in the larger interest of justice with a view to enable the assessee to avail proper opportunity for disposal of appeal by the CIT(A) on various points. Needless to say, the assessee shall extend full co-operation to the CIT(A) without any demur, failing which, the CIT(A) shall at liberty to conclude the appellate proceedings in accordance with law. Hence, the order of the CIT(A) appealed against, is set aside and all the issues raised in the impugned appeal are restored back to the file of the CIT(A) for fresh adjudication in accordance with law after giving reasonable opportunity of hearing to the assessee.

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

This Order pronounced on 16/06/2022

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Dated: 16/06/2022
*Neha, Sr. Private Secretary
Copy forwarded to:

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

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	14.06.2022
Date on which the typed draft is placed before the dictating Member	15.6.2022
Date on which the typed draft is placed before the Other Member	16.06.2022
Date on which the approved draft comes to the Sr. PS/PS	16.06.2022
Date on which the fair order is placed before the Dictating Member for pronouncement	16.06.2022
Date on which the fair order comes back to the Sr. PS/PS	16.06.2022
Date on which the final order is uploaded on the website of ITAT	16.06.2022
Date on which the file goes to the Bench Clerk	16.06.2022
Date on which the file goes to the Head Clerk	