

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 4516/DEL/2019**  
**[Assessment Year: 2013-14]**

Sanjay Jain, C/o Umang Sahai Aggarwal Advocate, 505 Maitri Apartment, Opp. Metro Pillar 411, Sector-09, Rohini, Delhi-110085. PAN- AEDPJ9883K	<u>Vs</u>	Income-tax Officer, Ward-69(2), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	<b>None</b>	
<b>Respondent by</b>	<b>Sh. Om Prakash, Sr. DR</b>	
<b>Date of hearing</b>	<b>23.05.2022</b>	
<b>Date of pronouncement</b>	<b>10.06.2022</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-21, New Delhi, dated 18.03.2019, pertaining to the assessment year 2013-14. The assessee has raised following grounds of appeal:

“1. That the learned CIT(Appeals)-21 has erred in law as well as on facts of the case in sustaining addition of Rs. 1189100/- made to the taxable income of the assessee by Assessing Officer on the allegation of unexplained money U/s 69A of IT Act. Thus the addition sustained is totally wrong, illegal and excessive in nature.

2. That the learned CIT(Appeals) has further erred in holding that the documents submitted as evidence by the assessee to prove the genuineness of transactions are a smoke screen to cover up the true nature of the transactions.

3. That the learned CIT(Appeals) has erred in drawing adverse inference

*against the assessee merely on the basis of general modus operandi of certain persons with whom the assessee has never transacted and with whom no connection or nexus was proved or brought on record by the Assessing Officer.*

4. *That the learned CIT(Appeals) has further erred in making enhancement of Rs. 35673/- assessing @ 3% commission paid on Rs. 1189100/- and treated the same as unexplained expenditure U/s 69C of IT Act. though there was no evidence on recorded. Thus the enhancement of income of Rs. 35673/- is totally wrong and illegal.*

5. *That before enhancing income no show cause notice was served on the appellant service of which is compulsory to serve. Thus enhancement made without serving show cause notice is totally wrong, illegal and excessive in nature and is against principle of natural justice.*

6. *That the order passed by the Hon'ble CIT(Appeals) uploading the order of the learned Assessing Officer is bad in law and is liable to be quashed as the Hon'ble CIT(Appeals) and the learned Assessing Officer placed reliance on information of investigation wing without providing any opportunity to the appellant to examine the same.*

7. *That the learned CIT(Appeals) has wrongly upheld the addition made by Assessing Officer U/s 69A of IT Act. though there was no unexplained investment. Thus the addition confirmed U/s 69A of IT Act. is totally wrong, illegal and excessive in nature.*

8. *That the addition made by the Assessing Officer and upheld by the learned CIT (Appeals) is based merely on suspicion, surmises and conjectures and that the learned CIT (Appeals) ought to have deleted the addition made.*

9. *That the case laws relied upon by the appellant has been wrongly discarded without making speaking order and case law cited by learned CIT(Appeals) are not applicable. Thus the order passed by learned CIT(Appeals) is totally wrong, illegal and excessive in nature.*

10. *That the appellant craves leave to add, delete, alter or amend any ground/grounds of appeal at the time of hearing.*

2. Facts giving rise to the present appeal, in brief, are that in this case return of income, declaring total income at Rs. 15,51,030/- , was filed on 31.7.2013 and the same

was processed u/s 143(1) of the Income-tax Act, 1961, hereinafter referred to as “the Act”, on 18.11.2013 at the returned income. Subsequently, the case was taken up for scrutiny through CASS. Notice u/s 143(2) of the Act was issued. In response thereof learned representative of the assessee appeared and attended the proceedings. The Assessing Officer while framing the assessment made addition of Rs. 11,89,100/-, thereby he assessed the income at Rs. 27,40,125/- after allowing the statutory deduction u/s 80C, 80TTK and 80D. Aggrieved against this addition, the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions, dismissed the appeal. Now the assessee is in appeal before this Tribunal against the dismissal of the appeal.

3. The only effective ground in this appeal is against sustaining the addition of Rs. 11,89,100/- and further enhancing the income by Rs. 35,670/- treating the same as commission paid on the aforesaid transaction of Rs. 11,89,100/-.

4. At the time of hearing no one attended the proceedings. On the last date of hearing also there was no one to attend the proceedings. From the record it is seen that on various occasions there has been no representation on behalf of the assessee except on 24.11.2021 when one Shri Umang Sahai Aggarwal requested for adjournment and the case was adjourned to 22.2.2022. However no one appeared on behalf of the assessee and the matter was fixed for hearing on 23.5.2022. On this date also no one attended the proceedings. Therefore, looking to the conduct of the assessee that being thoroughly negligent for not pursuing the present appeal, the appeal is taken up for hearing in the

absence of the assessee and is being decided on the basis of material available on record.

5. I have heard learned DR who has heavily relied upon the orders of the authorities below and submitted that the assessee has grossly failed to substantiate the claim.

6. It was noticed by the Assessing Officer that the assessee had earned income by selling shares of M/s Multiplus Resources Ltd. The assessee was asked to produce the relevant evidence relating to the transaction. However, no evidence was furnished by the assessee. Therefore, treating the same as unexplained the Assessing Officer made addition of Rs. 11,89,100/- u/s 69A of the Act.

7. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who after having sustained the action of the Assessing authority, further enhanced the income by Rs. 35,673/- being the commission paid on the transaction. The assessee has challenged the enhancement made by the learned CIT(Appeals) without giving notice to the assessee. I find merit in the contention of the assessee which has been stated in the grounds of appeal that no notice of enhancement was given to the assessee. No such notice has been referred to in the impugned order. Therefore, the action of the learned CIT(Appeals) to the extent of enhancement of income is not justified and is contrary to the provisions of the Act. I, therefore, direct the AO to delete the addition of Rs. 35,673/-.

8. Now coming to the issue whether the Assessing Officer was justified in rejecting the claim of exemption u/s 10(38) of the Act I find that the Assessing Officer has based his finding on the basis of investigation carried out by the Investigation Wing at Kolkata.

The assessee has not placed on record any material to controvert the finding of the assessing authority. Therefore, in the absence of any material rebutting the finding of the Assessing officer the action of the authorities below cannot be disturbed. Hence, the same is sustained. The addition to the extent of Rs. 11,89,100/- is hereby sustained and rest of the addition is deleted.

9. In the result, appeal of the assessee is partly allowed in terms stated herein above.

Order pronounced in open court on 10<sup>th</sup> June, 2022.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI