

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 8841/DEL/2019 (A.Y 2011-12)

Gyan Prakash Nirmal G-12 AB, Kalkaji, New Delhi PAN No. ABVPN1918N (APPELLANT)	Vs.	ITO Ward-5(1) New Delhi. (RESPONDENT)
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Assessee by :	None
Department by:	Md. Gaysuddin Ansari, Sr DR

Date of Hearing	19.07.2022
Date of Pronouncement	21.07.2022

ORDER

PER YOGESH KUMAR US, JM

This appeal has been filed by the assessee against the order dated 19/07/2019 passed by CIT (A)-36, Delhi, for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

1. *That the order dated 19.07.2019 passed u/s 250 of the Income -tax Act, 1961 (hereinafter called the "Act") by the Learned Commissioner of Income-Tax (Appeals) - 36, New Delhi is against law and facts on the file in as much as he was not justified to pass*

the order ex-parte based on materials available on record and without giving an opportunity of being heard to the Appellant

2. That the order dated 19.07.2019 passed u/s 250 of the Act by the Learned Commissioner of Income-Tax (Appeals) -36, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Assessing Officer in making an addition of Rs. 30,90,000/- (Rs. 12,70,000/- and Rs. 18,20,000/-) in respect of cash deposited in saving bank accounts bearing No. 4300101001886623 and 430010100189491 in the name of Mr Pawan Kumar Sharma and Narender Kumar Sharma in which the Appellant is second holder by treating the said transactions as unexplained cash credits in the Appellant hands within the meaning of section 68 of the Income-tax Act, 1961.

3. That the order dated 19.07.2019 passed u/s 250 of the Act by the Learned Commissioner of Income-Tax (Appeals) -36, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Assessing Officer in framing the assessment by not following the basic principles of natural justice since no valid show cause notice was ever issued to the Appellant thus, making the assessment bad in law.

That the Appellant craves to add, amend, alter, modify or delete any or all of the grounds of appeal before or at the time of hearing.”

2. Brief facts of the case are that, the return declaring Rs. 27,02,390/- was filed for the Assessment Year 2011-12 and the same was processed u/s 143(1) of the Act. The case was selected under scrutiny and notice u/s 143(2) of the Act was issued and the representative of the assessee has participated in the assessment proceedings. As per the information to the A.O, the assessee has

deposited cash in his bank Account No. 430010100188623 and 430010100189491, Rs. 12, 70,000/- and Rs. 18,20,000/- respectively with Axis Bank. The assessee was maintaining several bank accounts and based on the statements. The total credits/deposits are Rs. 1,63,92,944/- in his bank accounts which was maintained by the assessee individually or jointly. The assessee has been asked to provide explanation with regard to his bank accounts in which he is a secondary holder. Further, the assessee was also asked to provide explanation with regard to credit deposits in Account No. 430010100188623 and 430010100189491 with Axis Bank. The assessee has filed an affidavit by providing the details. Further a final opportunity has also been given on 24/03/2014 to the assessee to produce books of account, documents in support of the cash deposits, details of agricultural income along with the land ownership. In response to the said show cause notice, the assessee has neither appeared nor filed any details. The Ld. A.O found that, the assessee has not discharged his onus, therefore, amount received during the year under consideration of Rs. 30,90,000/- has been held to be unexplained cash credit and consequently added to the total income of the assessee u/s 68 of the Act by assessment order dated 25/03/2014.

3. Aggrieved by the assessment order dated 25/03/2014, the assessee has preferred an Appeal before the CIT(A). The Ld. CIT (A) vide order dated 19/07/2019 dismissed the Appeal ex-parte. Aggrieved by the order dated 19/07/2019, the assessee has preferred the present Appeal on the grounds mentioned above.

4. None appeared for the assessee even after notice sent by the Registry has been duly served on the assessee. Therefore, we deem it fit to hear the Ld. DR and decide the Appeal.

5. We have heard the Ld. DR perused the material on record and gave our thoughtful consideration.

6. It is a case of the assessee before us that, he has been denied with the opportunity of being heard by the Ld.CIT (A) as per Assessee's Grounds of Appeal No. 1. It is found that, after filing the Appeal, the assessee fail to participate in the Appeal proceedings effectively and consequently the Appeal has been dismissed by the Ld.CIT (A) ex-parte. On perusal of the order of Ld.CIT(A), it is found that no one was present on behalf of the assessee and the Ld. CIT(A) has dismissed the Appeal in the absence of the assessee. Further, the Ld.CIT(A) has not discussed the merits of the case in detail. Therefore, in our opinion, to render substantial justice, the matter deserves to be set aside to the file of CIT (A) for fresh consideration to decide the matter on merit after giving opportunity to the assessee.

7. In the result, Grounds of Appeal No. 1 is allowed for statistical purpose with a direction to CIT(A) to decide the matter afresh on merit by giving opportunity of being heard to the assessee. The assessee is also directed to co-operate with the appellate proceedings before the CIT(A). Since, we have remanded the matter to the CIT(A) Ground No. 2 & 3 requires no adjudication by us.

8. In the result, the Appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21st July, 2022.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated : 21/07/2022

R.N

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI