

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.5495/Del/2017
Assessment Year: 2011-12

Malik Enterprises Pvt. Ltd. 2144, Turkman Gate, Delhi Delhi-110006 PAN No.AAACM1403C	Vs	ITO Ward – 1 6 (2) New Delhi
(APPELLAN		(RESPONDENT)

Appellant	None
Respondent	Ms. Rinku Singh, CIT DR

Date of hearing:	26/07/2022
Date of Pronouncement:	26/07/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-38, New Delhi dated 09.06.2017 pertaining to A.Y.2011-12.

2. The grievance of the assessee read as under :-

1. That on the facts and circumstances of the case and in the Law, the CIT(A) has grossly erred in confirming the addition as made by the Assessing Officer ('AO') on account of undisclosed sources within the meaning of Section 68 of the Income Tax Act, 1961 of Rs. 48,30,000/- for the Asstt Year 2011-12.
2. That on the facts and circumstances of the case and in the Law, the CIT(A) has erred in confirming the addition on account of Declared Net Income of Rs. 2,90,234 /- for the Asstt Year 2011-12.
3. That the Ld. CIT(A) has erred by wrongly treating part of the unsecured loan as received by the Assessee company from one of the director's of the company of an amount of Rs. 48,30,000/- as addition to the income of the Assessee company as unexplained cash credit under provisions of section 68 of The Income Tax Act. The Ld. A.O. further erred in observing that the creditworthiness of the said director as above, is not established. The Ld. A.O. further erred in observing that the Assessee company failed to furnish the statement, previous year's and current year's documents and other relevant evidences, to support availability of cash/funds in the hands of the above said director of the company.
4. That the Ld. CIT(A) has erred by wrongly treating Rs. 96,600/- (being advance from customer), as addition to the income of the Assessee under provisions of Section 68 of the Income Tax Act, 1961.

That the appellant craves leave to Add to and / or Amend, modify or withdraw the grounds outlined above before or at the time of hearing of the appeal.

3. None appeared on behalf of the assessee inspite of notice. We decided to proceed exparte. Having heard the Ld. DR we have carefully perused the orders of the authorities below.

4. We find that the CIT(A) dismissed the appeal of the assessee by an exparte order. We find that the appeal before the CIT(A) was transferred vide order of PCCIT, New Delhi dated 24.11.2016. Though there is mention of notice issued by the CIT(A) but there is no reference to show that the notice was actually served upon the assessee. We find that the CIT(A) has extracted the assessment order and has confirmed the addition.

5. We are of the considered view that the CIT(A) ought to have decided the appeal on merits after serving a proper notice and after affording a reasonable and sufficient opportunity of being heard to the assessee.

6. Therefore, in the interest of justice and fair play we restore this appeal to the files of the CIT(A). The CIT(A) is directed to serve a proper notice and afford a reasonable and sufficient opportunity of being heard to the assessee and decide the appeal on merits of the case. The appeal of the assessee is treated as allowed for statistical purpose.

7. Decision announced in the open court on 26.07.2022.

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- .07.2022

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI