

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SH. NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER**

ITA Nos.92, 93, 94 & 95/Del/2021  
(Assessment Years : 2010-11, 2011-12, 2012-13 & 2013-14)

Dheeraj Nath Gupta C/o. Sabharwal & Partners, 4819/24, Mathur Lane, Ansari Road, Daryaganj, New Delhi-02  <b>PAN : AFIPG 6152 L</b> <b>(APPELLANT)</b>	Vs.	ITO Ward – 46(4) New Delhi  <b>(RESPONDENT)</b>
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Assessee by	--None--
Revenue by	Shri M. Baranwal, Sr. D.R.

Date of hearing:	28.07.2022
Date of Pronouncement:	28.07.2022

**ORDER**

**PER BENCH :**

These four appeals filed by the assessee are directed against the order dated 29.12.2017 of the Commissioner of Income Tax (Appeals)-16, New Delhi relating to Assessment Years 2010-11, 2011-12, 2012-13 & 2013-14.

2. Since the issue in all four appeals are common, therefore we have clubbed all of them together for the sake of brevity and

convenience. However, we are taking ITA No.92/Del/2021 as a lead case.

3. The relevant facts as culled from the material on records are as under :

4. Assessee is an individual. AO noted that information was received by him through ITO (Inv.) about suspicious transaction report indicating cash deposits of Rs. 24,00,000/- by the assessee in his bank account. Accordingly notice u/s 148 of the Act was issued on 23.07.2014 which was served on the assessee. AO has noted that thereafter several notices issued to the assessee had remained un-complied. AO thereafter passed order u/s 143(3) r.w.s 147 of the Act vide order dated 14.03.2016 and determined the total income at Rs.22,14,530/-.

5. Aggrieved by the order of AO, Assessee carried the matter before CIT(A) who vide order dated 29.12.2017 in Appeal No.10147/16-17 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

1. *“That the order passed u/s 147/143(3) of the Act, 1961 on 14.03.2016 is perverse to the law and to the facts of the case, therefore, not tenable or as such liable to be quashed, because of the non-receipt/service of any notice claimed to be issued u/s 148 of the Act, which has not been taken into consideration by the Ld. CIT(A) while passing the appellate order.*
2. *That the assessment order passed on 14.03.2016 for the assessment year 2010-11 also becomes illegal because of the non-issuance and*

*service of notice u/s 143(2) of the Act prior to pass the orders as the AO failed to verify from his records that the appellant has already filed his ITR on 09.10.2010 for the A.Y. 2010-11.*

- 3. That the order passed by the AO as upheld by the Ld CIT(A) was further unconstitutional against the law and to the facts of the case, because of getting and granting approval in a mechanical manner u/s 151 of the Act.*
- 4. That the CIT(A) dismissed the appeal of the appellant without adjusting and touching upon the grounds of appeal on its merits thereof, as such the appellate order passed was further not tenable under the law and to the facts of the case.*
- 5. That the Ld AO has erred in law as well as on facts of the case while holding that there existed any relevant material which could lead to formation of requisite reasons to believe.*
- 6. That the Ld AO has erred in law as well as on facts by arbitrarily by applying NP rate @6.10% on lump sum basis on Rs.14,58,185/- claiming it to be an undisclosed receipts of the assessee, without the support of any material either collected or ever placed upon records.*
- 7. That the Ld AO has further erred in law as well as on facts by arbitrarily making illegal and impugned addition of Rs.8,41,472/- u/s 69A, holding to be an unaccounted/unexplained money/receipts if any be earned by the appellant during the year under assessment, without the support of any material either collected or ever placed upon records, having any nexus to the income so determined as has been presumed to be earned by the appellant during the year under consideration.*
- 8. That the Ld AO has erred in law as well as on facts by making illegal and impugned addition of Rs.5,470/- without considering the fact that the same has already been disclosed in Profit and Loss account as other income which offered for tax.*
- 9. That the Ld AO has erred in law as well as on facts by arbitrarily making illegal and impugned addition amounting to Rs.33,162/- holding to be the same as unexplained investment u/s 69 of the Act, without the support of any material either collected or ever placed upon records.*

10. *That the Ld AO has erred in law as well as facts by arbitrarily making further illegal and impugned additions of Rs.10,20,281/- on account of outstanding liability of creditors as appearing in the Balance Sheet.*
11. *That the Ld AO has erred in law as well as on facts by summarily disallowing Rs.15,264/- (20% of total expenses of Rs.76,321/-) claimed in P & L Account alleging these expenses attributable towards personal use, without the support of any material either collected or ever placed upon records having nexus to the disallowance of such expenses @20% on lump sum basis.*
12. *That charging of interest u/s 234B and initiated of penalty proceedings u/s 271(1)(b) & 271(1)(c) of the Act are also against the law and to the facts of the case.*
13. *That the appellant assails their right to amend, alter or change any grounds of appeal at any time, even during the course of hearing of this instant appeal.”*

6. On the date of hearing, none appeared on behalf of the assessee nor any adjournment application was filed on its behalf though the case file reveals that the notice of hearing was served on the assessee. In such a situation, we proceed to dispose of the appeals *ex parte qua* the assessee and after hearing the Learned DR.

7. Before us, Learned DR fairly admitted that CIT(A) has summarily dismissed the appeals of the assessee and has not disposed of the appeal on merits. He submitted that since there was no appearance by assessee before CIT(A), CIT(A) has rightly dismissed the appeal of the assessee. He thus supported the order of CIT(A).

8. We have heard the Learned DR and perused the material available on record. The perusal of CIT(A) order reveals that CIT(A) has passed an ex parte order without deciding the issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by dismissing the appeals without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no party should be condemned unheard. In view of these facts, we set aside the impugned order of CIT(A) dated 29.12.2017 and restore the issue to the file of CIT(A) for re-adjudication of the issue after granting sufficient opportunity of hearing to both the parties. Assessee is also directed to promptly furnish the details called for by the authorities. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the grounds raised by the assessee. **Thus the ground of assessee is allowed for statistical purposes.**

9. **In the result, the appeal of assessee is allowed for statistical purposes.**

10. **As far as ITA Nos. 93, 94 & 95 for A.Ys. 2011-12, 2012-13 & 2013-14** are concerned, before us, Learned DR has submitted that the issue raised in the appeals for A.Ys. 2011-12, 2012-13 & 2013-14 are identical to that of A.Y. 2010-11. We have hereinabove

while deciding the appeal for A.Y. 2010-11 for the reasons stated therein have set aside the order of CIT(A) and directed him to pass order on merits. We for similar reasons also restore all the appeals of assessee for A.Ys. 2011-12, 2012-13 & 2013-14 to CIT(A) with similar directions. Thus **the grounds of the assessee are allowed for statistical purposes.**

**11. In the combined result, all the four appeals of the assessee are allowed for statistical purposes.**

**Order pronounced in the open court on 28.07.2022**

**Sd/-  
(NARENDER KUMAR CHOUDHARY)  
JUDICIAL MEMBER**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

*Date:- 28.07.2022*

*PY\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI