

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

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

ITA No. 343/Del/2021
(Assessment Year : 2018-19)

Frontline Securities Ltd. M-6, IInd Floor, M Block, GK, Part-II, New Delhi PAN No. AAACF 0930 D (APPELLANT)	Vs.	DCIT CPC New Delhi (RESPONDENT)
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Assessee by	--None--
Revenue by	Shri M. Baranwal, Sr. D.R.

Date of hearing:	03.08.2022
Date of Pronouncement:	05.08.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 24.07.2020 of the Commissioner of Income Tax (Appeals)-3, New Delhi relating to Assessment Year 2018-19.

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

3. Assessee is a Non-Banking Finance Company stated to be engaged in making investment in securities i.e. Shares, Mutual Funds etc. who filed its return of income for A.Y. 2018-19 on 05.03.2019 declaring income at Rs.6,61,54,730/-. In the intimation issued u/s 143(1) of the Act by CPC, Bangalore vide Identification No. CPC/1819/A6/1903764581 dated 06.08.2019, the total income was determined at Rs.9,63,68,840/-. Aggrieved by the intimation issued u/s 143(1) of the Act, assessee carried the matter before CIT(A) who vide order dated 24.07.2020 in Appeal No.3/10134/19-20 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 Ld. Honorable Commissioner of Income tax (Appeals) has erred on the facts and circumstances of the case. Accordingly, the order needs to be quashed.*
2. *That on the facts and circumstances of the case the Ld. Honorable Commissioner of Income tax (Appeals) has erred by stating that the Notice of hearing was issued to the appellant on 14/07/2020 however no such notice was received by appellant.*
3. *That on the facts and circumstances of the case the Ld. Honorable commissioner of Income tax (Appeals) has erred by passing the order without providing sufficient opportunity of being heard to the appellant despite of the fact that at the time of reply of the order the Corona Pandemic was on its peak.*
4. *That on the facts and circumstances of the case the Ld. Honorable Commissioner of Income tax (Appeals) has failed to appreciate the statement of facts and grounds of appeal filed by the appellant at the time of filling with honorable Commissioner of Income Tax (Appeals).*
5. *That on the facts and circumstances of the case the Ld. Honorable Commissioner of Income tax (Appeals) has failed in appreciating the fact that the assessee company had earned capital gains in different*

quarters and the provisions of section 234C is not applicable where there is short fall in the payment of tax on account of under estimate or failure to estimate the amount of capital gains - and the assessee pays the whole of the amount of tax payable in remaining installments of advance tax which are due.

6. *That on the facts and circumstances of the case Ld. Honorable Commissioner of Income tax (Appeals) has failed to consider the fact that the appellant company filed Tax as per the MAT provisions and ITR-6 Form in which the Return of Income was filed, only considers the taxable capital gains considered under the normal provisions of Income Tax Act, 1961 after setting off the current year as well as brought forward capital losses. Also, there is no column in Schedule CG for furnishing quarter wise details of Long Term Capital which is exempt u/s 10(38) of the Income Tax Act, 1961. Whereas, under the MAT provisions total Capital Gain earned during the year is considered while computing Book Profit u/s 115JB. Therefore, the assessee company is bound to create a chart to calculate interest u/s 234C of the Income Tax Act, 1961, which cannot be disclosed in ITR Form.*
7. *That on the facts and circumstances of the case the Ld. Hon'able Commissioner of Income tax (Appeals) erred by wrongly quoting the case law **CIT vs. Anjum M.H Ghaswala (2001) 252 ITR 1 (SC)** by stating that Interest u/s 234C is mandatory and consequential to the determination of total income. Although the Interest u/s 234C is mandatory, however, provision of section 234C is not applicable to any short fall in the payment of the tax due on the returned income, where such shortfall is on account of under estimate or failure to estimate the amount of capital gains.*
8. *That on the facts and circumstances of the case the Ld. Honorable Commissioner of Income tax (Appeals) and Deputy Commissioner of Income Tax (CPC) failed in appreciating the fact that the assessee company had earned capital gains in different quarters and the provisions of section 234C is not applicable where there is short fall in the payment of tax on account of under estimate or failure to estimate the amount of capital gains and the assessee pays the whole of the amount of tax payable in remaining installments of advance tax which are due and approved the levy of an interest of Rs. 3,65,391/- under section 234C of the Income Tax Act, 1961 as against Rs. 30,000/- as computed by the assessee,. Accordingly, the*

addition of interest u/s 234C of Rs. 3,65,391/- needs to be deleted.

9. *That the appellant craves permission to add, amend alter or vary all or any of the ground of appeal on or before the date of hearing of the appeal.”*

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

5. Before us, Learned DR supported the order of AO.

6. 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 appeal 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 parties should be condemned unheard. In view of these facts, we set aside the impugned order of CIT(A) dated 24.07.2020 and restore the issue

to the file of CIT(A) for re-adjudication of the issues after granting sufficient opportunity of hearing to the assessee. Assessee is also directed to furnish the details called for by the lower 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.**

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

Order pronounced in the open court on 05.08.2022

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

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

Date:- 05.08.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI