

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.1901/Del./2019
(ASSESSMENT YEAR : 2012-13)**

Truna Gogna Gugnani,
28/21, East Patel Nagar,
New Delhi – 110 008.

vs.

ITO, Ward 16 (3),
New Delhi.

(PAN : AUKPG4873F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri H.K. Choudhary, CIT DR

Date of Hearing : 20.10.2022

Date of Order : 20.10.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee arises out of the order of the Id. CIT (Appeals)-38, New Delhi dated 31.01.2019 and pertains to Assessment Year 2012-13.

2. The grounds of appeal raised in assessee's appeal read as under :-

“1. That the Ld. CIT(A) on the facts and in law, the Ld. CIT(A) grossly erred in dismissing the appeal filed by the appellant ex-parte without offering proper opportunity to the appellant to put forth its case or being passed in violation of principles of natural justice is vitiated and requires to set aside.

2. That the Ld. CIT(A) on the facts and in law, the Ld. CIT(A) grossly erred in sustaining the order of assessment passed u/s. 153C/143(3) of the I.T. Act, 1961 assessing the income of the appellant at Rs.5,50,300/-.
 3. That the Ld. CIT(A) erred in sustaining the order passed by the AO. u/s. 153C/143(3) of the LT. Act, 1961 in the absence of any incriminating documents/evidence found as a result of search in the case of M/s. M.C. Jewels Pvt. Ltd.
 4. That the Ld. CIT(A) erred in sustaining the order of the A.O. passed u/s. 153C/143(3) of the LT. Act, 1961 in the absence of paper satisfaction recorded by the A.O. in the case of M/s. M.C. Jewels Pvt. Ltd. u/s. 153A/143(3) of the LT. Act, 1961.
 5. Without prejudice to the above legal ground, the Ld. CIT(A) grossly erred on facts and circumstances of the case and in law, in sustaining the addition of Rs.90,000/- made by the A.O. treating purchase of shares as a bogus purchase.
 6. That the Ld. CIT(A) on the facts and in law grossly erred in sustaining the addition of Rs.1,800/- made by the A.O by treating commission paid as deemed income without any evidence.”
3. Brief facts of the case are that in this case, Assessing Officer passed an order under section 143 (3) of the Income-tax Act, 1961 (for short 'the Act') read with section 153C making addition of bogus purchases and commission paid.
4. Against the above order, assessee filed an appeal before the Ld. CIT (A). Assessee raised various grounds including the ground that addition u/s 153C cannot be made *de hors* incriminating material. Ld. CIT (A) did not adjudicate upon the merits of the case but dismissed the appeal for non-prosecution.

5. Against this order, assessee is in appeal before us. We have heard ld. DR for the Revenue and perused the record. None appeared on behalf of the assessee despite notices. Notices have been returned unserved.

6. We note that in this case, ld. CIT (A) dismissed the appeal for non-prosecution without deciding the appeal on merits. Such an act on the part of the ld. CIT (A) is not permissible on the touchstone of provisions contained u/s 251 of the Act. Accordingly, we set aside the order to the file of ld. CIT (A). Ld. CIT (A) is directed to adjudicate upon the merits of the case and decide as per law. Needless to say, an opportunity of being heard is to be provided to the assessee.

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

Order pronounced in the open court on this 20th day of October, 2022 after the conclusion of the hearing.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 20th day of October, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-38, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**