

**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. 1103/DEL/2020 (A.Y 2016-17)**

M/s. DSD Homes Pvt. Ltd., Top Floor, Sachdeva Corporate Tower, Karkardooma, 17, DDA, Community Centre, Delhi – 110 092.  <b>PAN No. AAECD6248G</b>  <b>(APPELLANT)</b>	Vs.	ACIT, Circle : 7 (1) New Delhi.  <b>(RESPONDENT)</b>
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<b>Assessee by :</b>	<b>N o n e;</b>
<b>Department by:</b>	<b>Shri Rajendra Jha, Sr. D. R.;</b>

<b>Date of Hearing</b>	<b>09.11.2022</b>
<b>Date of Pronouncement</b>	<b>15.11.2022</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the assessee for assessment years 2016-17, against the order of the Id. Commissioner of Income Tax (Appeals)-3, New Delhi [hereinafter referred to CIT (Appeals) dated 06.11.2019.

2. The assessee has raised the following substantive grounds of appeal:-

*“1. That the Ld CIT (A) has erred in law and on facts for not providing proper opportunity of being heard and dismissing the appeal of the appellant ex-parte is against the principal of natural justice and accordingly deserves to be quashed.*

*2. That the Ld CIT (A) has erred in law and on facts, and is not justified in confirming the additions of Rs.3,15,25,200/- made by the assessing officer by treating it unexplained credit u/s 68 of the I. T. Act without appreciating that the unexplained credit did not belong to the assessee. As such, the addition of Rs.3,15,25,200/- may please be deleted.”*

3. Brief facts of the case are that, the assessee who was a Real Estate Projects Developer in NCR Delhi, filed its return declaring income of Rs. 39,22,670/-. The case of the assessee was selected for scrutiny and the assessment proceedings has been initiated. The Assessment order came to be passed u/s 143(3) of the Act by making an addition of Rs. 3,15,25,200/- u/s 68 of the Act.

4. Aggrieved by the assessment order dated 16/12/2018, the assessee has preferred the appeal before the CIT(A). The Ld.CIT(A) vide order dated 10/01/2019 dismissed the appeal ex-parte by relying on the order of the Tribunal in CIT Vs. Multiplan India Pvt. Ltd. in 38 ITD 320 (Del).

5. Aggrieved by the order dated 10/01/2019, the assessee has preferred the present appeal on the grounds mentioned above.

6. None appeared for the assessee, the notice sent by the registry to the registered address returned with an endorsement “Left”. Therefore, we are

constrained to decide the appeal after hearing the Ld. DR and on perusing the material on record.

7. It is found that the addition of Rs. 3,15,25,200/- has been made by the A.O. on account of unexplained loan. The Ld. A.O. has asked the assessee to prove and submit the evidence u/s 68 in respect of the loan but the assessee has failed to prove the same. Further, the Ld. A.O. while making the addition has observed as under:-

*“It is settled position in law that an assessee can escape the Section 68 if he successfully proves the identity of the payer, capacity of the payer and genuineness of the transactions. It is not undisputed that the genuineness of a loan transaction primarily depends upon the genuineness of the payer and when the payer itself is not genuine (though his identity is not disputed), then the complete structure of the genuineness of the transaction, created through paper work falls flat. To draw an inference about the genuineness of a transaction, the Hon’ble Courts have held that apparent must be considered real until there are reasons to believe that the apparent is not real. (The facts and circumstances of this case is an example of apparent being not real, but just a pretense of genuineness of loan transaction, which is not real. The aforesaid observations only goes to delineate that though paper work may have been completed by the assessee for showing the receipt of loan through banking channels, there is predominant evidence on record which proves without in iota of doubt that the assessee received accommodation entry of Rs. 3,15,25,200/- (79,00,000 + 2,36,25,200) from these companies in its books and has not disclosed the source of the source. And the assessee is silent on proving the identity, creditworthiness and genuineness with respect to the same. Reference may further be drawn from the judgment of Hon’ble High*

*Court of Delhi in the case of Pr. CIT-7 vs. Bikram Singh (ITA No. 55/2017), Judgement of Hon'ble Supreme Court CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC), Case of Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC). Hence, addition of Rs. 3,15,25,200/- is made as unexplained cash credit u/s 68 of the I.T. Act.”*

8. During the appellate proceedings, the Ld.CIT(A) has not decided the appeal on merit. Though the assessee has not appeared before the appellate proceeding the Ld.CIT(A) cannot dismiss the appeal for default without deciding on the merit. Therefore, in our opinion, if an opportunity is given to the assessee to put forth his case before the CIT(A), the substantial justice would be rendered. Therefore, the Ground No. 1 of the assessee is hereby allowed by remanding the matter to the file of CIT(A) with a direction to decide the appeal on merit after hearing the assessee.

9. In view of the remanding of the matter to the file of Ld.CIT(A) to decide the matter on merit, the Ground No. 2 of the assessee requires no adjudication at our hand.

10. In the result, the appeal of the assessee is party allowed for statistical purpose.

Order pronounced in the open court on : **15/11/2022.**

**Sd/-**  
**( SHAMIM YAHYA )**  
**ACCOUNTANT MEMBER**  
Dated : 15/11/2022

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

\*R.N, Sr. PS\*

Copy forwarded to :

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI