

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

**ITA No.1738/DEL/2022  
[Assessment Year:2016-17]**

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|--|----|---|
| Upham International Corporation and Quest Engineers & Consultants Pvt. Ltd.<br>103-104, Gyan Khand, Ghaziabad, Uttar Pradesh-201002<br><b>PAN-AAAAU6524C</b> | Vs | Income Tax Officer,<br>Ward-2(2)(1),<br>Ghaziabad, U.P. |
| Assessee   |    | Revenue   |

|             |                        |
|-------------|------------------------|
| Assessee by | None                   |
| Revenue by  | Sh. Om Parkash, Sr. DR |

|                              |                   |
|------------------------------|-------------------|
| <b>Date of Hearing</b>       | <b>07.11.2022</b> |
| <b>Date of Pronouncement</b> | <b>14.11.2022</b> |

**ORDER**

This appeal filed by the assessee is directed against the order of the NFAC/CIT(A), New Delhi, dated 31.05.2022 pertaining to Assessment Year 2016-17.

2. The grounds of appeal read as under:-

*“That in any view of the matter the order passed by the CIT Appeal dated 31.05.2022 under section 250 of the Act, is illegal, invalid in so far as no opportunity was allowed to the appellant and non-providing opportunity is nothing but a violation of natural justice hence\* the entire order of CIT (Appeal) dated 31/05/2022 is illegal, invalid in the facts and circumstances of the case.*

*That in any view of the matter the authorities below have erred in law and on facts in making addition of Rs.34,76,137 which has already been subjected to tax in A.Y. 2015-16 but without making any verification of the facts of the case addition made and maintained by two lower authorities which action is illegal as well as baseless.*

*That in any view of the matter addition of Rs.34,76,137/- made by the assessing officer as per order dated 08.12.2018 without considering the facts and his action as confirmed by CIT (Appeal) by passing ex-parte decision is highly unjustified incorrect as the said amount was already included in the gross receipt for assessment year 2015-16 and duly considered Hence addition is illegal.*

*That in any view of the matter the bill amount of Rs.30,93,750/- and service tax amount Rs.3,82,387/- totalling Rs.34,76,137/- considered by the appellant as well as by department in the assessment year 2015-16 as per the method of accounting as the same is included in the disclosed receipt hence the addition of Rs.34,76,137. is the double addition in the assessment year 2016-17 is unwarranted as the same disclosed in assessment year 2015-16 and even 'explanation filed was not considered hence addition is unwarranted.*

*That in any view of the matter a specific and detailed reply in compliance to notice under section 143 (2) was filed before the assessing officer ward 2 (2) (1) (Ghaziabad) but without considering the submission addition was made by the assessing office and confirmed by CIT (appeal) which is not correct.*

*That in any view of the matter in the assessment year 2015-16 the gross receipt from business was Rs.74,65,304/- as disclosed which includes Rs.34,76,137/- but the same amount again added in assessment year 2016-17 simply on the basis of form no.26AS which is highly unjustified because it is a double taxation of same receipt of amount.*

3. Brief facts of the case are that in this case, the assessment order u/s 143(3) was passed on 08.12.2018. The Assessing Officer completed the assessment by making the addition of a sum of Rs.34,76,137/-.
4. Against the above order, the assessee preferred appeal before the Ld. CIT(A).
5. The Ld. CIT(A) noted that the assessee made no submission and despite notices, the assessee has not seen fit to file any submission. He

held that the addition has been dealt with cogently by the Assessing Officer in his order. Hence, he dismissed the assessee's ground.

6. Against the above order, the assessee is in appeal before us.

7. We have heard the Ld. DR and perused the record. None appeared on behalf of the assessee. We find that the Ld. CIT(A) has passed a laconic and non-speaking order and has dismissed the appeal for non-prosecution. Section 251 of the Income Tax Act, does not empower the Ld. CIT(A) to dismiss the appeal for non-prosecution. Accordingly, in the interest of justice, we remit the issue to the file of the Ld. CIT(A). The Ld. CIT(A) is directed to pass the order on merits of the appeal before him after giving the assessee an opportunity of being heard.

8. In the result, these appeals by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 14<sup>th</sup> November, 2022.

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

**Delhi:** 14.11.2022.

*Shekhar,*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi