

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.1732/Del./2020
(ASSESSMENT YEAR : 2013-14)**

Vikram Kumar Jain,
B-2, Local Shopping Complex,
Naraina Industrial Area, Phase II,
New Delhi – 110 028.

vs. ACIT, Circle 50 (1),
New Delhi.

(PAN : AAIPJ5287C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Ms. Rajeshwari R. Sr. DR

Date of Hearing : 19.12.2022

Date of Order : 21.12.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id.

CIT (Appeals)-42, New Delhi dated 27.02.2020 for the AY 2013-14.

2. The grounds of appeal taken by the Revenue read as under :-

“1. That the learned Commissioner of Income Tax (Appeals)- 42, New Delhi has erred both in law and on facts In upholding the addition of Rs.26,45,620.00 and dismissing the appeal as not maintainable for having been filed beyond the time allowed u/s 249(2) although it was submitted that there was delay on filing the appeal on account of ill-health of the assessee, who later passed away on 24.09.2018, which accounts to reasonable diligence on part of assessee. It is further submitted there was no negligence on the part of the appellant for not filing the condonation application. That the submissions made both during the assessment

proceedings as well as appellate proceedings have not been properly appreciated by the Authorities below.

2. That the learned Commissioner of Income Tax (Appeals)- 42, New Delhi has further erred in sustaining the addition of a sum of Rs.9,06,707/- u/s 14A read with rule 8D(2) towards expenditure in relation which does not form part of total income without appreciating that the total exempt income earned by the assessee was merely a sum of Rs. 2953.00 on account of dividend. That the Learned Assessing Officer has failed to consider that the matter does not fall under any of the case laws cited by him.

3. That the learned Commissioner of Income Tax (Appeals)- 42, New Delhi has further erred in sustaining the addition of a sum of Rs.16,85,057/- u/s 2(22)(e) towards the loan raised by the Company which has been covered under deemed dividend in the hands of the assessee. That the Learned Assessing Officer has failed to consider that the matter does not fall under any of the case laws cited and submitted during the course of assessment proceedings.

4. That the learned Commissioner of Income Tax (Appeals)- 42, New Delhi has further erred in sustaining the addition of a sum of Rs. 53,853/- on account of expenses without appreciating that the same have been incurred in the normal course of business and hence should not be added to the income of appellant.

5. That it is therefore, prayed that, it be held that assessment made by the learned Income Tax Officer and sustained by the learned Commissioner of Income Tax (Appeals) be quashed and, further addition so upheld by the learned Commissioner of Income Tax (Appeals) along with interest levied be deleted and appeal of the appellant be allowed.”

3. At the outset, we note that in this case, Id. CIT (A) has passed an order wherein despite noting that assessee passed away on 24.09.2018 and noting that legal heir, Ms. Shivani Jain was brought on record, proceeded to pass an order in the name of deceased person, Vikran Kumar Jain. In this order, Id. CIT (A) did not condone the delay in filing the appeal which should have been filed by 29.02.2016 but the appeal was filed on 12.05.2016. Ld. CIT (A) had noted that there is no

condonation application and accordingly, ld. CIT (A) dismissed the appeal without adjudicating the merits of the case.

4. We note that ld. CIT (A)'s order contains a serious error inasmuch as ld. CIT (A) passed the order in the name of the deceased assessee despite noting in his order that he was duly informed that assessee has expired. In our considered opinion, interest of justice will be served if the issue is to be remitted to the file of ld. CIT (A). Ld. CIT (A) is directed to consider the issue afresh and pass an order after giving the assessee one more opportunity of being heard. Ld. CIT (A) is also directed to bring the legal heir on record in his order. Ld. DR fairly agreed to the above proposition. Despite several notices sent to the assessee, none appeared on behalf of the assessee. Hence, we pass this order ex-parte.

5. In the result, this appeal by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on this 21st day of December, 2022.

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

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

**Dated the 21st day of December, 2022
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-42, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.