

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 3966/Del/2019  
Assessment Year: 2015-16**

Mamta Malu, BG-113,  
Top Floor, Shalimar Bagh,  
Delhi.

**PAN: AAAPM2381C**  
(Appellant)

Versus ACIT, Circle 52(1),  
New Delhi.

(Respondent)

Appellant by : None  
Respondent by : Shri Jeetendra Chand, Ld. Sr. DR

Date of hearing : 28.12.2022  
Date of order : 30.12.2022

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

This appeal has been preferred by the Assessee against the order dated 05.12.2018, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)- 12, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2015-16.

**2.** In the instant case, though notice for the date of hearing on 28.12.2022 was sent to the Assessee, however, none appeared on behalf of the Assessee. From the record it reflects that notices have been sent to the Assessee on various dates of hearing, however, the Assessee failed to appear on the previous dates of hearing as well.

**3.** In this case, the Assessee by e-filing its return of income on dated 11.10.2015 declared an income of Rs.4,63,290/- which was processed u/s. 143(1) of the Act. Later on, the case of the Assessee was selected for complete scrutiny through "CASS" for the reason of "suspicious long term capital gain on shares", which resulted into issuance of statutory notices.

The Assessee attended the assessment proceedings from time to time and filed necessary details which were examined on test check basis by the Assessing Officer. The Assessing Officer ultimately by passing the assessment order u/s. 143(3) of the Act, made the addition of Rs.1,38,60,981/- as unexplained cash credits u/s. 68 of the Act and Rs.3,92,835/- on account of an expenditure incurred out of the books to obtain the bogus entries and as per deeming provisions of section 69 of the Act.

**4.** The Assessee being aggrieved, challenged the said additions before the Id. Commissioner, who vide impugned order affirmed the said additions.

**5.** The Assessee being aggrieved, is in appeal before us and raised the following grounds of appeal:

*"1. The Ld. CIT(A) has erred both in law and on facts by grossly violating the principles of natural justice by dismissing the appeal of the appellant ex-parte without giving an opportunity of being heard.*

2. *The Ld. CIT(A) has erred both in law and on facts in upholding the addition of Rs. 1,30,94,481/- made by Ld. AO under section 68 of the Act on account of alleged bogus claim of capital gain exemption under section 10(38) of the Act.*

3. *Without prejudice and in alternative, the Ld. CIT(A) has erred both in law and on facts in upholding the addition of Rs. 1,30,94,481/- made by Ld. AO under section 68 of the Act by wrongly relying on statements of certain persons, despite the fact that no allegation or accusation against the appellant or against the company (whose shares were sold by the appellant) were made by such persons.*

4. *Without prejudice and in alternative, the Ld. CIT(A) has erred both in law and on facts in upholding the addition of Rs. 1,30,94,481/- made by Ld. AO under section 68 of the Act by wrongly relying on statements of certain persons without providing any opportunity to the appellant to cross-examine them.*

5. *The Ld. CIT(A) has erred both in law and on facts in upholding the addition of Rs. 3,92,835/- made by Ld. AO under section 69C of the Act by arbitrarily presuming non-existent commission on alleged bogus claim of capital gain exemption under section 10(38) of the Act.*

6. *The Ld. CIT (A) has erred both in law and on facts by not adjudicating on the ground for initiation of penalty proceedings by the Ld. AO under section 271(l)(c) of the Act on the premise that it is independent and can't be entertained in quantum proceedings.*

*The Appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal."*

**6.** Ground No. 1 pertains to violation of principles of natural justice, as the impugned order was passed as ex-parte. We observe from Para No. 3 of the impugned order that initially, vide notice dated 24.08.2018, the appeal of the Assessee was fixed on 13.09.2018 by the Id. Commissioner, however, the Assessee made no compliance. Thereafter, vide notice dated 15.10.2018, the appeal was fixed on 09.11.2018, however, on that date, a letter for adjournment was filed by the Assessee on Dak counter. Subsequently, vide notice dated 12.11.2018, the appeal was again fixed on 03.12.2018, however, still the Assessee made no compliance. Therefore, in compelling circumstances, the Id. Commissioner decided the appeal as ex-parte by realising that **"the**

***Appellant is either seeking adjournment on one ground or the other without substantiating the reason for the adjournment request or making no compliance at all. The appeals cannot be kept pending for indefinite period without any reasonable cause. It is observed that the Appellant is not interested to pursue the appeal filed by her”.***

7. We do not find from the impugned order as to whether notice dated 12.11.2018 by which the date of hearing was fixed on 03.12.2018 has ever been served upon the Assessee or not and therefore, considering the peculiar facts and circumstances, and for the ends of justice, we are inclined to give an opportunity to the Assessee to plead its case before the Id. Commissioner. Consequently, the case is remanded to the file of the Id. Commissioner for decision afresh, suffice to say, by affording reasonable opportunity of being heard to the Assessee.

We also direct the Assessee to cooperate with the appellate proceedings before the Id. Commissioner and appear and file documents relevant for adjudication of the appeal before the Id. Commissioner as and when would be required. In case of default, the Assessee shall not be entitled for any leniency and the Id. Commissioner would be at liberty to pass the order in accordance with law and on the basis of the material available on record and without showing any leniency on the latches of the Assessee, if any, to be accrued.

**8.** In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 30/12/2022.

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**

\*aks/-