

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B”: NEW DELHI**

**BEFORE
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 9301/Del/2019
Asstt. Year: 2011-12

CBS Holding Private Ltd. S.B. Garg & Co. CAs., Shakti Nagar, New Delhi – 110 007 PAN AADCC3702D (Appellant)	Vs.	ITO, Ward-5(4), New Delhi. (Respondent)
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Assessee by:	Shri Sachin Kumar, CA
Department by :	Shri T. James Singson, CIT- DR
Date of Hearing	11.01.2023
Date of pronouncement	19 01.2023

ORDER

PER ASTHA CHANDRA, JM

1. This second round of appeal filed by the assessee is directed against the order dated 30.10.2019 of the Ld. Commissioner of Income Tax Appeals-2, New Delhi (“**CIT(A)**”) pertaining to assessment year (“**AY**”) 2011-12.

2. The assessee has taken the following grounds of appeal:

“1. *The impugned order dated 30-10-2019 passed by the Id. Commissioner of Income Tax (Appeals) - 2, New Delhi [hereafter the CIT (A)] is bad in law, inter alia, because:*

(1) *The Id. CIT (A) failed to appreciate the fact, informed vide application dated 15-10-2019, that the Assessee did not receive the documents pertaining to the assessment from the erstwhile CA and requested the Id. Income Tax Officer, Ward 5(4), New Delhi (hereafter the AO) vide application dated 28-09-2019 to*

provide the certified true copy of the documents from the assessment record, on which the Id. AO prescribed the copying fees of Rs. 1,000/-, which was deposited on 30-09-2019, and the Id. AO directed the Assessee to collect the documents on 11-10-2019, but the documents were not provided to the Assessee, this prevented the Assessee to represent its case before the Id. CIT (A);

- (2) The Id. CIT(A) failed to provide proper opportunity of hearing to the Assessee;*
- (3) The Id. CIT (A) failed to consider and decide the grounds of appeal and record finding on the facts of the case*

Additional ground of appeal:

- 2. The assessment order made by the Id. AO is bad in law, null and void ab-initio and deserves to be annulled, inter alia, because:*
 - (1) The assessment order is barred by limitation period, because the demand notice, issued by the Id. AO, is dated 16-04-2014, whereas as per section 153(1) of the Income Tax Act, 1961 (hereafter the Act) assessment could have been made latest by 31-03-2014;*
 - (2) The Id. Deputy Commissioner of Income Tax, Circle 3(1), New Delhi, having issued the notice dated 17-08-2013 under section 143(2) of the Act, was seized of the assessment proceedings; and the Id. AO took up the assessment proceedings in the middle and made the assessment, without there being any order by the Competent Authority transferring the jurisdiction of the case to the Id. AO;*
 - (3) The Id. AO did not issue any notice under section 143(2) of the Act, within the limitation period provided by proviso to section 143(2) of the Act;*
 - (4) The selection of the case for scrutiny, being without examination of the return of income and financial statements and under CASS that is on the direction of extraneous authority, and consequential notice under section 143(2) of the Act is in gross violation of the letter and spirit of the provisions of section 143(2) of the Act.*
- 3. The Id. AO erred in making the best judgment assessment under section 144 of the Act, and without prejudice failed to follow and adhere to the principles of the best judgment assessment and law relating thereto.*
- 4. The Id. AO erred in estimating and assessing the business income at nil against declared business loss of Rs. 2,44,32,509, without any basis and particularly without rejecting the books of account and providing any opportunity.*

5. *The Id. AO failed to provide adequate / proper opportunity of hearing and to submit the documents.*
6. *The Id. AO erred in considering the short term capital gain of Rs. 2,40,41,229, as the business income.*
7. *The Id. AO erred in adding share capital of Rs. 1,50,000.*
8. *The Id. AO erred in adding share premium of Rs. 1,48,50,000.*
9. *The Id. AO erred in adding unsecured loan of Rs. 8,52,58,441.*
10. *The Id. AO erred in disallowing the expenditure of Rs. 1,31,79,443 u/s 14A of the Act.*
11. *The Id. AO erred in disallowing the Filing fee of Rs. 10,012 paid to the Registrar of Companies.*
12. *The Id. AO erred in disallowing the Chit loss of Rs. 48,37,000.*
13. *The Id. AO erred in disallowing the interest on TDS of Rs. 29,869.*
14. *The Id. AO erred in disallowing the expenditure of Rs. 75,90,220 and Rs. 22,19,958 for non-deduction of TDS.*
15. *The Id. AO erred in adding credit balance of Rs. 47,75,000 in respect of M/s D K Chit fund only for want of confirmation.”*

3. The assessee is stated to be in the field of investment of stock and share in both listed and unlisted companies on short and long term basis. The assessee filed its return for AY 2011-12 on 13.03.2013 declaring income of Rs. 14,78,229/-. The case was selected for scrutiny. Statutory notices under section 143(2) and 142(1) of the Income Tax Act, 1961 (**the “Act”**) were issued and served upon the assessee in response to which compliance was made. Requisite details/information/documents were submitted. Even then, the Ld. Assessing Officer (**“AO”**) observed that the AR failed to make any submissions and completed the assessment in an ex parte manner, though under section 143(3) of the Act on total income of Rs. 15,58,10,681/- on 28.02.2014 against which the assessee filed appeal and being aggrieved by the order of the Ld. CIT(A) came in appeal before the Tribunal in the first round. The Tribunal vide order in ITA No.

6729/Del/2015 dated 12.04.2017 set aside the order of the Ld. CIT(A) and restored the matter to his file with direction to adjudicate the appeal afresh. The Ld. CIT(A) passed the appellate order on 30.10.2019 dismissing the appeal of the assessee ex-parte in limine against which the assessee is in appeal before the Tribunal in second round.

4. The Ld. AR submitted that proper opportunity of hearing was not provided to the assessee to present its case. Moreover, the Ld. CIT(A) has dismissed the appeal of the assessee for non prosecution and without considering the case of the assessee on merits which is not in accordance with law. The Ld. AR cited numerous decisions and urged that the appeal be restored to the file of the Ld. CIT(A).

5. The Ld. DR has filed a Paper Book which contains the assessee's letter dated 13.12.2013 addressed to the Ld. AO in reply to notice under section 143(2) containing documents required by him consisting of 68 pages. Again the assessee enclosed details/clarifications required by the Ld. AO with its letter dated 28.01.2014 which appears at pages 11-106 of the Paper Book filed by the Ld. DR. Vide letter dated 24.01.2014 the Director of the assessee company informed the Ld AO about authorising a CA to appear and discuss the case and the said CA vide letter dated 27.01.2014 sought adjournment to any date after 8th of February 2014.

6. We have considered the submission of the parties and perused the material available in the records. It is obvious that the Ld. CIT(A) has passed the appellate order dismissing the appeal of the assessee ex-parte in limine, observing that the assessee has not filed any documentary evidence/explanation in support of its claim. Before the Ld. CIT(A), the Ld. AO also did not attend the appellate proceedings to apprise the Ld. CIT(A) about the availability of information/details/documents on his records which are contained in the Paper Book filed by the Ld. DR. In such a scenario, we are of the view that in the interest of justice, it would be just and fair if the appeal is restored back to the file of the Ld. CIT(A) again to decide the appeal afresh on merits after allowing reasonable opportunity to

the parties to present their case with a direction to the parties to fully cooperate with the Ld. CIT(A) in appellate proceedings. We order accordingly.

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

Order pronounced in the open court on 19th January, 2023.

sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Dated: 19/01/2023

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	