

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.337/Del./2022  
(ASSESSMENT YEAR : 2012-13)**

Mcleodganj Tea House Pvt. Ltd.,  
202, Nilgiri Apartment,  
9, Barakhamba Road,  
New Delhi – 110 001.

vs. ITO, Ward 2 (2),  
Noida.

**(PAN : AAGCM3449N)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri K. Sampath, Advocate  
Shri Raj Kumar, Advocate  
REVENUE BY : Shri Jitender Chand, Sr. DR

Date of Hearing : 02.02.2023  
Date of Order : 02.02.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee arises out of the order of Id. CIT (A)-1,  
Noida dated 24.06.2016 and pertains to assessment year 2012-13.

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

“On the facts and in the circumstances of the case and in law -

a. The assessment order passed by the ITO, Ward 2(2),  
Noida on 27.03.2015 is arbitrary, erroneous, misconceived,  
devoid of jurisdiction and illegal and must be quashed;

b. Without prejudice to the above, the addition as made by the Assessing Officer sum of Rs.4,28,43,875/- on account of loans and advances at Rs.5,04,358/-, sundry creditors at Rs.4,18,39,517/- and commission amount of Rs.5,00,000/- is arbitrary, erroneous, unwarranted and illegal and must be quashed;

c. That the disallowance of expenses at 25% on an adhoc basis even when they are audited and supported by vouchers is high-handedness, unnecessary and unmerit and must be quashed;

d. That the directions to charge interest and initiate penalty proceedings u/s 271 (1)(c) of the Act is without proper application of mind and being misconceived must be quashed.”

3. In this case, in assessment order, AO made additions for loans & advances, unconfirmed sundry creditors and TDS deducted from payment of commission i.e. totaling Rs.4,28,43,875/- and expenditure not vouched amounting to Rs.4,09,210/-.

4. Against the above order, assessee appealed before the Id. CIT (A). Ld. CIT (A) dismissed the appeal for non-prosecution without deciding upon the merits of the case. The order of Id. CIT (A) in this regard read as under :-

“ The present appeal is filed by the appellant against an assessment order dated 27/03/2015 passed by the Id. A.O. u/s. 143(3) of LT. Act, 1961 for A.Y. 2012-13 on a total income of Rs.4,32,53, 100/- against a returned income of Rs.Nil. Aggrieved by the same the appellant has preferred the present appeal.

2. The appeal was filed on 28/04/2014 and therefore could not be taken up during F.Y, 2015-16 being Category 8-4, appeal. The same was listed for hearing in F.Y. 2016-

17 on 17/05/2016 but there was no response. Neither the appellant entered appearance nor any request for adjournment was made. The case was again listed for hearing on 01/06/2016 but again there was no response. It is seen that the appellant is a habitual defaulter. It is has similarly failed to cooperate with the ld. A.O. at the time of assessment which was noted by the ld. A.O. in the impugned assessment order. It's a high demand case and substantial amount of revenue is locked up in dispute which the appellant is not paying on the ground of pendency of its appeal. While the appellant is avoiding paying the tax due on the ground of pendency of its appeal it is at the same time avoiding appearing in the appeal. The conduct of the appellant is therefore not deserving of countenance. It is clear that the appellant is willfully evading appearing in the appeal. The present appeal was filed by the appellant in the month of April, 2015 and has therefore been pending for about a year and quarter. There has been sufficient time for preparing the case and seeking a long adjournment is neither necessary nor appropriate. The disposal of appeals are governed by the statutory instructions of the CBDT and it is the consistent endeavor of the CBDT to get the pending appeals disposed as fast as possible and the individual CsIT (Appeals) are assigned specific targets for disposal of pending appeals. In view of these controlling facts and circumstances and that sufficient opportunity has already been allowed to the appellant and appellant has not considered it necessary to enter appearance and defend the case the pending appeal is decided on the basis of material available on records and the impugned order of assessment passed by the ld. A.O.”

5. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.
6. Both the parties fairly agreed that ld. CIT (A) has not decided the case on merits but dismissed the same for non-prosecution. As per

section 251 of the Income-tax Act, 1961 (for short 'the Act'), ld. CIT(A) is duty bound to decide the case on merits and not dismissed the appeal for non-prosecution. In these circumstances, we remit the appeal to ld. CIT (A). Ld. CIT (A) is directed to pass proper speaking order on merits of the case. Needless to add, assessee should be given adequate opportunity of being heard.

7. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

**Order pronounced in the open court on this 2<sup>ND</sup> day of February, 2023 after the conclusion of the hearing.**

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

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

**Dated the 2<sup>ND</sup> day of February, 2023  
TS**

Copy forwarded to:

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

**AR, ITAT  
NEW DELHI.**

---