

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.1632/Del/2022
Assessment Year: 2005-06

Kaveri Infrastructure Pvt. Ltd. B-14, Geetanjali Enclave, New Delhi-110017 PAN No.AABCK7148K	Vs.	ACIT Central Circle-6 New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. R. S. Singhvi, CA
Respondent by	Modh. Gayasuddin Ansari, CIT (DR)

Date of hearing	14.03.2023
Date of pronouncement	14.03.2023

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 31/05/2022 passed by the Learned Commissioner of income-tax (Appeals)-30, New Delhi [in short the Ld. CIT(A)] for assessment year 2005-06 raising following grounds:

1. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in passing order u/s 250 dated 31/05/2022 on ex-parte basis without affording proper opportunity of being heard.*
- (ii) *That in absence of service of physical notice or proper intimation, the impugned appellate order is illegal and in total disregard to principles of nature justice.*

(iii) That the appellant company being defunct and having closed the operation, the service of notice, if any, on e-filing portal could not be seen or complied due to circumstance beyond control and as such there was no opportunity in absence of physical service of notice or proper intimation.

2 (i) That on the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in upholding the validity of assessment order u/s 254/143(3) r.w.s 153A dated 31/12/2019 even though same is barred by limitation in terms of section 153(5)/(6) of the Income Tax Act, 1961.

(ii) That the assessment having been set-aside on limited issue and in absence of any requirement of furnishing of any document by the appellant, the case is covered u/s 153(5) of the Income Tax Act, 1961 and such the impugned assessment order having been passed after expiry of period of limitation, the same is invalid and void-ab- initio.

3 (i) That on the facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding the additions made in the impugned order even though the same are in total disregard to directions of Hon'ble ITAT and scheme of Act and are not sustainable under the law.

(ii) That Hon'ble ITAT has explicitly rejected the basis of additions in original assessment and having set-aside the order of first appellate authority, the CIT(A) and the assessing officer has grossly erred in following the assessment order and order of first appellate authority in the first round which are no longer relevant and non est.

4(i) That on facts and circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition to the extent of Rs. 33,42,000/- in respect of jottings in a rough sheet without appreciating the facts or proper opportunity.

(ii) That the assessing officer having failed to issue any show cause notice or call for any explanation with regard to this very issue, the impugned addition to the extent of Rs.33,42,000/- is highly arbitrary and against the principles of natural justice.

(iii) That the addition is merely on the basis of rough document having no evidentiary value

or relevance, the same is illegal and outside the scope of proceedings u/s 153A of the Act.

(iv) That there being no case of any unaccounted cash transactions or any adverse evidence found during course of search, the impugned addition is on mechanical basis and not sustainable under the law.

(v) That assessing officer having even failed to specify the section or nature or character of so-called cash transactions, the Ld. CIT(A) was not justified in upholding the addition even though the same is misconceived and on mechanical basis.

5 (i) That on facts and circumstances of the case, the Ld. CIT(A) was grossly erred in upholding the addition of Rs. 11,71,000/- being based on rough sheet containing third party transaction in total disregard to facts of the case.

(ii) That the impugned addition is merely on the basis of rough document having no evidentiary value or relevance, the same is illegal and outside the scope of proceedings u/s 153A of the Act.

(iii) That there being no case of any unaccounted cash transactions or any adverse evidence found during course of search, the impugned addition is on mechanical basis and not sustainable under the law.

(iv) That assessing officer having even failed to specify the section or nature or character of so-called cash transactions, the Ld. CIT(A) was not justified in upholding the addition even though the same is misconceived and on mechanical basis.

6. That the orders passed by lower authorities are not sustainable on facts and are bad in law.

7. That the appellant craves leaves to add, alter, amend, forgo any of the grounds of appeal at the time of hearing.

2. Briefly stated facts of the case are that the assessee company was engaged in the business of works contracts of Tubewells and Sewerage contracts. A search and seizure operation u/s. 132 of the IT Act, 1961 (in short the 'Act') was carried out on 24.04.2007 at the premises of the assessee and consequent assessment u/s. 143 (3) r.w.s. 153A of the Act was

completed on 29.12.2009 wherein various additions including additions of Rs.33,42,000/- and Rs.11,71,000/- were made to the returned income.

3. On further appeal, the Learned CIT(A) upheld those two additions. Subsequently the Income-Tax Appellate Tribunal (in short the ITAT), in the appeal preferred by the assessee, restored the issue involved in those two additions to the file of the Assessing Officer for fresh adjudication. In compliance to the direction of the ITAT, the Assessing Officer provided opportunity to the assessee. However, the assessee did not furnish any documentary evidences before the Assessing Officer except raising legal objections. The Assessing Officer accordingly, sustained those two additions of Rs.33,42,000/- and Rs.11,71,000/- on account of unexplained cash transactions. The assessee further preferred an appeal before the Learned CIT(A) however, did not respond to various notices issued by the Learned CIT(A) and therefore, the Learned CIT(A) decided the appeal *exparte qua* assessee and also decided the issue on merit.

4. Aggrieved with the finding of the Ld. CIT(A), the assessee is in appeal before us by way of raising the grounds as reproduced above.

5. Before us the Learned Counsel of the assessee submitted that assessee company has closed its business operations and almost defunct and, therefore, notices issued by the Learned CIT(A) through e-filing portal could not be seen and complied as there was no regular employee looking after the affairs of the assessee company. In view of the circumstances, the Learned Counsel of the assessee submitted that the appeal might be restored back to the Learned CIT(A) for deciding afresh after taking into consideration submission of the assessee. He requested that notice might be issued to the assessee by Learned CIT(A) in physical mode only. On the contrary, the Learned DR submitted that despite many opportunities provided to the assessee by the Learned CIT(A), no compliance was made, therefore, the Learned CIT(A) is justify in adjudicating the appeal *exparte qua* assessee.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The ground No.1 of the assessee relates to exparte adjudication of the assessee without affording proper opportunity of being heard. We note from the impugned order that assessee was provided at least eight opportunities however none complied by the assessee. The assessee however submitted that its operations were closed and being no regular employee looking after the matter, the notices issued by the Learned CIT(A) could not be complied. In our opinion, in the circumstances of the case there is a reasonable and sufficient cause for non compliance on the part of the assessee. Therefore, in the interest of substantial justice, we set aside the order of the Ld. CIT(A) and restore the matter back for providing one more opportunity to the assessee by the Learned CIT(A). The appeal has been restored to the file of the Learned CIT(A) particularly in view of the undertaking given by the Learned Counsel that due compliance shall be made before the Learned CIT(A). The Learned CIT(A) will issue notices as per the mode of services provided under the Act and Income Tax Rules 1962 (in short the rules) and assessee has to comply the same. He cannot put any condition of service of notice only through physical mode. Accordingly, the ground No.1 of the appeal of the assessee is allowed for statistical purpose. Other grounds were not argued at this stage and, therefore, the same are dismissed as infructuous.

8. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 14.03.2023.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated:14.03.2023

NEHA

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER