

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. CHANDRA MOHAN GARG, JUDICIAL MEMBER**

ITA No. 2861/Del/2022
(Assessment Year : 2012-13)

Forsan Healthcare P. Ltd. S-231, 1 st Floor, Greater Kailash, Part- II, New Delhi-110 048 PAN No. AAACF 7089 F (APPELLANT)	Vs.	DCIT Central Circle – 03 Delhi (RESPONDENT)
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Assessee by	Shri Satyajeet Goel, C.A.
Revenue by	Shri Pankaj Khanna, Sr. D.R.

Date of hearing:	28.02.2023
Date of Pronouncement:	17.03.2023

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 12.10.2022 of the Commissioner of Income Tax (Appeals)-23, New Delhi relating to Assessment Year 2012-13.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company stated to be engaged in providing professional services. It electronically filed its original return of income for A.Y. 2012-13 on 31.03.2013 declaring total income of Rs.2,85,45,910/- which was processed u/s 143(1) of the Act on 14.02.2014. Thereafter, a search and seizure operation was conducted u/s 132 of the Act on 09.09.2017 and consequently, assessment was framed u/s 153A of the Act vide order dated 31.03.2019 and the total income was determined at Rs.3,33,35,740/-.

4. Aggrieved by the order passed by AO, assessee carried the matter before CIT(A) who vide order dated 12.10.2022 in Appeal No.CIT(A), Delhi-23/10329/2019-20 dismissed the appeal on account of non-prosecution. Aggrieved by the order of CIT(A), Assessee is now in appeal before us and has raised the following grounds:

- “1.1 *That on the facts and circumstances of the case, the Ld. CIT(A) was not justified in deciding the appeal ex-parte without affording proper and reasonable opportunity of being heard.*
- 1.2 *That the impugned order has been passed in contravention to principles of natural justice and same is illegal and bad in law.*
- 2.1 *That on the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in upholding the validity of notice u/s 153A of the Income Tax Act, 1961 even though there is no case of discovery of any incriminating material during the course of search u/s 132 of the Income Tax act, 1961.*

- 2.2 *That this being a case of unabated assessment and the scope of assessment u/s 153A being strictly limited to incriminating material, the assumption of jurisdiction u/s 153A de hors any incriminating material is illegal and void-ab-initio.*
- 2.3 *That the excel sheet found from the computer of the employee being a rough, unauthenticated and uncorroborated sheet, the same cannot be considered as incriminating material for the purpose of assuming jurisdiction u/s 153A of the Income Tax Act, 1961.*
- 2.4 *That the notice u/s 153A is invalid and bad in law.*
- 3.1 *That on the facts and circumstances of the case, the Id. CIT(A) was not justified in upholding addition of Rs. 47,89,833/- on the alleged ground of undisclosed business receipt even though the addition is misconceived and on highly arbitrary basis.*
- 3.2 *That the excel sheet as relied upon by the assessing officer and CIT(A) being incoherent, vague, unauthenticated and uncorroborated document having no evidentiary value, the addition on the basis of such documents falls outside the scope and purview of proceedings u/s 153A and as such the addition is illegal and without jurisdiction.*
- 3.3 *That there being no case of any undisclosed business receipt and the contents of the excel sheet being factually incorrect, the entire basis of addition is illegal and contrary to facts and explanation putforth.*
- 3.4 *That the appellant has disputed the contents of the excel sheet and having furnished the reconciliation of the same, the observation of Id. CIT(A) regarding acceptance of difference between the receipts appearing on excel sheet and that recorded in the books is misconceived and not borne from record.*
- 3.5 *That the addition of Rs. 47,89,833/- is not sustainable on facts and liable to be deleted.*

4. *That on the facts and circumstances of the case, the assessment order having been passed without proper approval u/s 153D of the Income Tax Act, 1961, the same is illegal, invalid and non-est.*
5. *That the orders passed by lower authorities are not justified on facts and same are bad in law.*
6. *That the appellant craves leave to add, amend, alter or forgo any or all of the grounds as may be necessary and in the interest of justice.”*

5. Before us, Learned AR at the outset, referring to Ground No.1.1 stated that the reasons given by CIT(A) for dismissing the appeal are wrong, insufficient and contrary to facts and evidence on record and in law and while dismissing the appeal he has not decided the issue on merits. He stated that one more opportunity be granted to the assessee to plead its case and he undertakes that the assessee would be represented before the authorities and all the required details called for by authorities will be furnished.

6. Learned DR on the other hand supported the order of AO.

7. We have heard the rival submissions and perused the material available on record. We are of the view that by dismissing the appeal without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be

condemned unheard. In view of these facts, we set aside the impugned order of CIT(A) and restore the issue to the file of CIT(A) for re-adjudication of the issues after granting sufficient opportunity of hearing to the assessee. Assessee is also directed to promptly furnish the details called for by the lower authorities. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the grounds raised by the assessee. **Thus the grounds of assessee are allowed for statistical purposes.**

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

Order pronounced in the open court on 17.03.2023

Sd/-

**(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 17.03.2023

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI