

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 675/DEL/2023

Assessment Year: 2011-12

Peacock Leasing P. Ltd., First Floor 5A/10972 Gali No. 6, WEA Sat Nagar, New Delhi-110005.	<u>Vs</u>	Income-tax Officer, Ward-19(3), New Delhi.
PAN- AACCP2532P		
APPELLANT		RESPONDENT
Assessee represented by	Shri Sanjay Issar, CA	
Department represented by	Shri Om Parkash, Sr. DR	
Date of hearing	22.05.2023	
Date of pronouncement	22.05.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-7, New Delhi, dated 21.06.2019, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law the Hon’ble Commissioner of Income-tax (Appeals)’ erred in rejecting that addition u/s 147 / 144 when the assessee company out of some reason could not attend the hearing. The Hon’ble CIT(A) has issued ex parte order when the assessee company never received any notice at their premises further the

director of the assessee company cannot operate computer and does not know how to look into email etc. He completely relies upon counsel in this regard.

2. *On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals) and Ld. AO issued ex parte order without realizing that the counsel of the assessee Mr. B. L. Gupta was unwell and he expired on November 25, 2020 due to continued illness and Covid. The counsel of the assessee never informed about his ill-health to the director of the assessee company so that counsel could be replaced. The director of the assessee company never received any physical notice from the Hon'ble Commissioner of Income-tax (Appeals) so that he could realize that case is not being attended.*

3. *On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals)' erred not allowing when the Ld. AO in its order has picked wrong figure of returned income of Rs. 266360/- instead of Rs. 44398/- as per return of income filed by the assessee and raised the income assessed by Rs. 221962/-.*

4. *On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals)' erred in considering Rs. 1316AA/- as adjustment entry when no proper detail is provided by Ld. AO while providing reasons recorded for reopening the case under section 148.*

5. *On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals)' erred in making addition of Rs. 245752/- when the share transaction relating to scrip of **DMC Education Ltd** which is available with Ld. AO as penny stock when the appellant company has regularly purchased and sold these shares and finally the appellant has incurred loss and the Ld. AO is considering it as beneficiary while providing reasons recorded for reopening the case under section 148.*

6. *On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals)' erred in not allowing the appeal without considering that the assessee has to pay 81% interest u/s 234B for an un warranted addition.*

7. *The Appellant prays that the addition/ disallowance oLKs.221962/- as*

error by Ld AO and Rs. 394898/- after providing due appeal affect recalculated in respect of issues mentioned in ground 1 to 4 be deleted.

8. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of appeal.”

2. At the outset learned counsel for the assessee submitted that in the instant case the assessment order as well as the impugned orders passed by the learned CIT(Appeals) have been passed ex parte to the assessee, without affording sufficient opportunity to the assessee to represent its case. It is prayed that the impugned order may be set aside and the matter may be restored to the file of the learned AO for assessment afresh after affording reasonable opportunity to the assessee of being heard.

3. The learned DR has no objection to the request so made on behalf of the assessee.

4. I have heard learned representatives of the parties. Admittedly in this case the assessment order as well as the order of learned CIT(Appeals) have been passed ex parte to the assessee. Considering the facts of the present case and to subserve the principles of natural justice, I am inclined to set aside the impugned orders of the authorities below and the matter is restored to the file of the Assessing Officer to pass the assessment order afresh, in accordance with law, after providing reasonable opportunity of being heard to the assessee.

5. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 22.05.2023.

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

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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