

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
DR. B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.1491/Del/2023
[Assessment Year : 2012-13]**

Anil Arora, E-96, Second Floor, East of Kailash, South Delhi, NewDelhi-110065. PAN-AAEPA9544P	vs	ITO, Ward-29(2), New Delhi.
APPELLANT		RESPONDENT
Appellant by		Shri Anup Mehta, CA
Respondent by		Shri Om Parkash, Sr.DR
Date of Hearing		19.06.2023
Date of Pronouncement		21.06.2023

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2012-13 is directed against the order of Ld. CIT(A), National faceless Appeal Centre (“NFAC”), Delhi dated 17.03.2023.

2. The assessee has raised following grounds of appeal:-

1. *“That on the facts and circumstances of the case and in law, the order passed by CIT(A) was not justified in passing the ex-parte order upholding the addition of Rs 26,16,300/- made in the assessment order as the notices for hearing mentioned in appellate order were never received by the appellant since the appellant had suffered heart attack and was admitted to the hospital.*
2. *That on the facts and circumstances of the case and in law, the order passed by CIT(A) is contrary to facts and bad in law.*

3. *That on the facts and circumstances of the case and in law the CIT(A) was not justified in upholding the addition of Rs 4,95,000/- by treating cash deposit in the bank account as unexplained income of the appellant.*
4. *That on the facts and circumstances of the case and in law the CIT(A) was not justified in upholding the addition of Rs. 21,21,300/- made on account of transaction made in Multi Commodity Exchange by treating the same as investment made in multi commodity exchange without any explanation ignoring the fact that only the profit/loss on the transactions made in Multi Commodity Exchange is taxable and not the contract value of transaction.*
5. *That the appellant craves leave to add, alter, and modify any of the grounds during the course of appellate proceedings.”*

3. Facts giving rise to the present appeal are that the case of the assessee was re-opened u/s 147 of the Income Tax Act, 1961 (“the Act”) on the basis that the assessee had deposited cash amounting to INR 4,95,000/- with HDFC Bank Ltd. and also entered into transaction with Multi Commodity Exchange of INR 21,21,300/-. Before the Assessing Officer (“AO”), no one attended the proceedings on behalf of the assessee. Therefore, the AO passed an *ex-parte* order thereby, he made addition of INR 26,16,300/- and assessed the income at INR 26,16,300/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, dismissed the appeal of the assessee. Before, Ld. CIT(A) also, there was no representation on behalf of the assessee. Hence, the appeal of the assessee was dismissed, without adjudicating on merit of case.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Apropos to grounds of appeal, Ld. Counsel for the assessee submitted that authorities below did not provide adequate opportunity of representation to the assessee and the impugned order was passed in the absence of the assessee. He further submitted that in the principle of natural justice, the assessee may be given opportunity to represent his case.

7. On the other hand, Ld. Sr. DR opposed the submissions and supported the orders of the authorities below.

8. We have heard Ld. Authorized Representatives ("AR") of the parties and perused the material available on record. Having considered the material available on record, we are of the considered view that the assessee should have been given adequate opportunity to represent his case. Therefore, to sub-serve the principles of natural justice, we hereby, set aside the impugned order and restore the assessment to the file of Assessing Authority to frame the assessment afresh after giving opportunity of being heard to the assessee. Thus, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 21st June, 2023.

Sd/-

**(DR.B.R.R.KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI