

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.1802/Del/2023
Assessment Year: 2009-10

DN Builders Pvt. Ltd.,
R-7, Raj Kunj, Rajnagar,
Ghaziabad,
Uttar Pradesh – 201 002.

Vs ITO,
Ward-2(2)(2),
Ghaziabad.

PAN: AACCD0379C

(Appellant)

(Respondent)

Assessee by	:	Shri Raj Kumar Aggarwal, CA
Revenue by	:	Shri Om Parkash, Sr. DR
Date of Hearing	:	12.09.2023
Date of Pronouncement	:	14.09.2023

ORDER

This appeal by the assessee pertaining to Assessment Year 2009-10 is filed against the order of the Id.CIT(A), National Faceless Appeal Centre, Delhi, dated 29th March, 2023. The assessee has raised the following grounds of appeal:-

"1. *The order passed by the AO is in bad in law and against the cannon of taxation.*

2. *The CIT(A) has erred on law and on facts by confirming A.O's action which was vitiated by the fact finding and reached on assessment only on the presumption and assumptions and not based on any relevant evidences or circumstances as the assessee is a Private Limited Company and engaged in the business of sale, purchase of land & building as well as construction of building also and an amount of Rs. 22,50,000/- was invested in purchasing of Plot which is duly reflected in profit & loss account.*

3. *The AO & CIT(A) has not provided the proper opportunity of being heard. The A.O. was in so much hurry to finalize the assessment that A.O. has not traced the ITR. The A.O. assessed the case on amount of Rs. 22,50,000/- not taken care of income declared in ITR filed inspite the call was not time barring in near future.*

4. *That having regard to the facts and circumstances of the case, Ld CIT(A) has erred in law by outrightly dismissing the appeal as no submission was filed in spite adjournment was requested for 20/03/2023 to 04/04/2023. Thus we were deprived off opportunity of being heard.*

5. *The appellant reserves its right add to amend to alter to submit additional evidence under rule 46A or to take additional grounds and in appeal memo at the time of hearing.*

6. *That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in charging interest under section 234A, 234B and 234C of the Income Tax Act, 1961.*

7. *That having regard to the facts and circumstances of the case Ld AO has erred in initiating the penalty proceeding under section 271(1)(c) of the Income Tax Act 1961.*

8. *The Appellant reserves its right add, to amend, to alter, or to take additional grounds and in Appeal memo at the time of hearing."*

2. The present appeal is barred by 12 days. The Id. Counsel for the assessee prayed for condonation of delay. The Id. DR, opposed the submissions of the Id. Counsel of the assessee.

3. I have heard the authorized representatives of the parties. After considering the submissions, the delay of 12 days is condoned and the appeal is taken up for hearing on merits.

4. The facts, in brief, are that in this case the assessment was reopened on the basis of AIR information u/s 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). In response to the statutory notices, no one attended the

proceedings, therefore, the AO proceeded to frame the assessment *ex parte qua* the assessee. Thus, the AO made addition of Rs.22,50,000/- in respect of the investment made in immovable property. Aggrieved by this, the assessee preferred appeal before the CIT(A) who also dismissed the appeal of the assessee *ex parte qua* the assessee.

5. The Id. Counsel for the assessee submitted that the assessee was not given sufficient opportunity to represent his case effectively before the lower authorities. He contended that in the interest of principle of natural justice the impugned order may be set aside.

6. On the other hand, the Id. DR submitted that the assessee has been thoroughly negligent and did not appear before the lower authorities. Such negligent conduct does not call for any leniency.

7. I have heard the rival contentions and perused the material available on record. There is no dispute with regard to the fact that the impugned order was passed *ex parte qua* the assessee. The Id. CIT(A) has not decided the issue on merit also. Therefore, the Id.CIT(A) was not justified in passing the order *ex parte*. In the interest of principle of natural justice, the Id.CIT(A) ought to have given another opportunity to the assessee. I, therefore, set aside the impugned order and restore the assessment to the file of the assessing authority to make the assessment afresh, after giving adequate opportunity of representation to the assessee. The

assessee would not seek any adjournment without any reasonable cause. The grounds raised in this appeal are allowed for statistical purposes.

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

Order pronounced in the open court on 14.09.2023.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Dated: 14th September, 2023.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi