

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.434/Del./2023
(ASSESSMENT YEAR : 1994-95)**

Ramesh Rajpal,
Z-45, Okhla Industrial Area Phase II,
Delhi – 110 020.

vs. ITO, Ward 28 (1),
New Delhi.

(PAN : AAFPR0496J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.S. Singhvi, CA
REVENUE BY : Shri Vivek Vardhan, Sr. DR

Date of Hearing : 03.10.2023
Date of Order : 06.10.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id.
CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated
26.12.2022 pertaining to assessment year 1994-95.

2. Grounds of appeal taken by the assessee read as under :-

“1(i) That on the facts and circumstances, the Ld. CIT(A) was not justified in deciding the appeal ex-parte without affording proper opportunity and in total disregard to principles of natural justice.

(ii) That the CIT(A) has grossly erred in dismissing the appeal without adjudicating the same on merits and the impugned order is illegal and contrary to mandate of section 250(6) of the Income Tax Act, 1961

2(i) That on the facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding addition of Rs. 39,32,850/- on the alleged ground of capital gain on sale of land at village Asola without appreciating the facts of the case or affording any opportunity.

(ii) That the addition being based on unreliable contents of a seized diary from third party having no evidentiary value, the impugned addition is misconceived and contrary to settled law.

(iii) That the assessing officer having failed to confront the so called seized material from third party forming the basis of adverse inference, the addition so made is illegal and in total disregard to principle laid down by Hon'ble IT AT and High Court.

3(i) That on the facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding addition of Rs. 10,000/- on the alleged ground of unexplained expenditure being presumed commission based on unauthenticated diary seized from third party without making proper enquiry or affording any opportunity.

(ii) That the so called contents of the third party diary being unreliable and having no evidentiary value, the impugned addition on the basis of the same is illegal and in total disregard to principle laid down by Hon'ble ITAT and High Court.

4(i) That on the facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding addition of Rs.1,99,450/- u/s 69 on the alleged ground of unexplained cash found during search even though there is no case of any unexplained cash.

(ii) That the cash so found being fully explained and corroborated from regular books of accounts, the impugned addition is on arbitrary and misconceived ground.

5. That the orders passed by lower authorities are not justified on facts and same are bad in law.”

3. In this case, pursuant to the assessment order, upon assessee's appeal, ld. CIT (A) held as under :-

“ Notice u/s 250 of the I. T Act was issued to the appellant on 22.11.2022 asking the appellant to file details in support of the grounds of appeal on or before 07.12.2022. However, appellant did not reply to the notice. Accordingly, a 2nd notice u/s 250 of the I.T Act was issued on to the appellant on 08.12.2022 asking the appellant to file details in support of the grounds of appeal on or before 23.12.2022. In this notice the appellant was duly informed that this is the final opportunity granted. However, appellant again did not reply to the 2nd notice too till date. In

absence of details in support of GOA filed, appeal cannot be decided. Then on-compliance to the 2 notices issued shows, that the appellant is not interested in pursuing his appeal. The order of A.O is upheld and the appeal stands DISMISSED.”

4. Ld. Counsel of the assessee in this regard has submitted that Id. CIT (A) has neither given proper opportunity nor decided the issue on merits. Hence, he pleaded that the issue may be remanded to the file of Id. CIT (A).

5. Per contra, Id. DR for the Revenue did not have any objection to the above proposition.

6. Accordingly, upon careful consideration, we note that Id. CIT(A) has dismissed the appeal for non-prosecution. As per the Income-tax Act, 1961 (for short 'the Act'), it is incumbent upon the Id. CIT (A) to pass an order on merits. Hence, in the interest of justice, we remit the issue to the file of Id. CIT (A) to decide afresh after giving proper opportunity of being heard to the assessee.

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

Order pronounced in the open court on this 6th day of October, 2023.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 6th day of October, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.