

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

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No:- 4140/Del/2019
(Assessment Year- 2015-16)**

Ritika Saxena, B-1/117, F.F. Ashok Vihar, Phase-II, Delhi-110052.	Vs.	ITO, Ward-34(4), New Delhi.
PAN No: BLDPS7647L		
APPELLANT		RESPONDENT

Assessee by : Shri Anil Jain, CA
Revenue by : Shri Vivek Vardhan, Sr. DR

Date of Hearing : 20.05.2024
Date of Pronouncement : 30.07.2024

ORDER

PER SUDHIR PAREEK, JM

This appeal by Assessee is directed against the order of Commissioner of Income Tax (Appeals)-12, New Delhi [for short hereinafter referred to as the ["CIT(A)"] dated 25.01.2019 for Assessment Year 2015-16 on the following grounds of appeal: -

“1. That the Hon'ble CIT (Appeals)-12, New Delhi and the Ld. ITO., Ward-34(4), New Delhi have passed such appellate as well as quantum order respectively which remained not only unlawful/illegal but also remained arbitrary, biased, against the facts and circumstances of the case of appellant as also, remained against the principles of natural justice without affording reasonable, adequate, proper and sufficient opportunity of being heard. Thus, the order so passed should not be sustained in the eyes of law and in the merits of the case and the additions in the returned loss/income made by Ld. ITO which later confirmed u/s 68 of the Income Tax Act, 1961 as also dismissal of all the grounds of appeal by Hon'ble First Appellate Authority should be quashed or set aside.

2. That the Ld. First Appellate Authority has erred in observing in para no. 3.1 of his order, adverse view i.e. "The appellant is either seeking adjournment on one ground or the other without substantiating the reason for adjournment request, the same appeal cannot be kept pending for indefinite period without any reasonable cause as also, by observing that the appellant is not interested to pursue her appeal" in respect of the adjournment applications moved/forwarded through legal modes. Thus the appeal order so passed should not be sustained in the eyes of law and in the circumstances vis-à-vis in the merits in absence of reasonable, proper and enough opportunity of being heard in favor of appellant as well as the counsel engaged.

3. That the adjournment letters moved/filed before the same authority remained with reasonable cause duly mentioned/narrated and remained proved all the times specifically on last hearing date dated 24-01-2019 when suddenly the counsel engaged fallen ill on 23-01-2019 and in support of adjournment letter so furnished with

medical certificate though e-mail seeking adjournment/fixing afresh on any day in February 2019 or earlier as per convenience of same Appellate Authority but the Ld. First Appellate Authority not only failed considered circumstances/reasonable cause explained in adjournment letters alongwith evidence furnished on maximum adjourned dates as per tabulation of notices and hearing dates given in his appeal order passed by Ld. CIT without discussing the reasons/reasonable cause and circumstances for taking such adjournments by the counsel engaged. Here also, the order passed by Ld. CIT should not be sustained since remained arbitrary, biased & unjustified.

4. That the appellant should not have been penalized by Ld. CIT for the fault of counsel, however remained if any in the mind/wisdom/view/observation of Ld. CIT (Appeals). Here, also the Ld. First Appellate Authority has erred in passing such appellate order and the same should be quashed or set aside.

5. That taking shelter/observing of different judgements relating to not only the issue of notice by Ld. CIT in regard to service of notices remained intact duly remained served on appellant finding that appellant has no intention to effectively pursue her appeal but also decision arrived at by Hon'ble CIT by rejecting all the grounds of appeal and sustaining all the additions made as per the assessing officer on the same observations as observed by assessing officer in regard to all the loans taken by appellant during the same year when the Ld. CIT dismissed all the grounds of appeal by either sustaining all additions or by observing creditors capacity according to him and Ld. AA since remained not proved where genuineness of the transactions failed proved in view of facts discussed by the same appellate authority. Here also, the Ld. CIT has erred by observing

that all the grounds of appeal according to him are liable to be dismissed since could not be substantiated during the appellate proceedings. Ground no. 7 taken in first appeal about seeking of further ground of appeal including filing of supporting evidence, documents and details has been observed by Ld. CIT that the same remained "General in nature" which does not require any specific adjudication. This rejection of ground likewise other grounds by dismissing the appeal on the part of Ld. CIT (Appeals)-12 remained not only unjustified and unlawful but also remained completely against the factual position of the case of appellant, remained without applying his mind/vision who altogether has failed to give proper justice. Thus order so passed should be quashed or set aside.

6. That both the authorities remained failed to discharge their onus to prove their stand before making and confirming such huge additions in the returned loss/income whereso, on the other hand the appellant duly discharged altogether her onus of proving the creditworthiness and genuineness of all loan creditors since all the transactions altogether made through banks without undergoing any cash transaction. Here observing by Ld. AA and confirming by Hon'ble CIT that "possibility of having assessee own money from undisclosed sources routed back to assessee in shape of loan cannot be ruled out considering cash deposits prior to date of loan transactions" therefore should not had been made a ground of rejection by both authorities below. Hence the order so passed by both the authorities below since remained of pro-revenue nature are liable to be quashed or set aside by this Hon'ble court.

7. That the appellant reserves the right of pressing forward any further ground or grounds of this appeal vis-à-vis filing of further

evidence, details and documents at hearing stage subject to prior permission of this Hon'ble Court.”

2. Heard rival submissions and carefully scanned the material available before us.

3. At the outset, the Ld. CIT(A) dismissed the assessee's appeal by stated that the appellant is either seeking adjournment on one ground or the other without substantiating the reason for the adjournment request. The appeals cannot be kept pending for indefinite period without any reasonable cause. It is observed that the appellant is not interested to pursue the appeal filed by her.

4. The Ld. Counsel for the assessee stated that the appeal has been dismissed by Ld. CIT(A) in passing ex-parte order without providing reasonable, adequate, proper and sufficient opportunity of being heard.

5. Per contra, Learned Departmental Representative (hereinafter referred to as 'Ld. DR') relied on the order passed by both lower authorities and stated that sufficient opportunity provided to assessee before passing impugned order.

6. We have carefully considered the order of the CIT(A). We find that the appeal has been dismissed due to non prosecution of the appeal.

7. By hearing both side and perusing material placed before us, we are of the humble opinion that justice should not only be done but it appears to be done and in order to achieve the noble goal of justice and before reaching any conclusion it is expedient to consider, all the material/ documents in existence and produced and whatever it is, if one more opportunity provided to assessee /appellant, object of justice will be served to some extent. Thus, for this purpose, we are inclined to remit back the matter to Ld. CIT(A) with the direction to decide afresh.

8. Consequently, matter is remitting back to the Ld. CIT(A) with the direction to decide the matter afresh after affording more effective, meaningful and sufficient opportunity of being heard to the assessee. At the same time, assessee / appellant shall cooperate in proceedings and will not seek unnecessary adjournments for ensuring expeditious disposal of the matter. Assessee / appellant is at liberty to file / submit any documents / evidence etc. in support of his claim.

10. In the result, this appeal is allowed as indicated above for statistical purpose.

Order pronounced in the Open Court on 30.07.2024

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 30/07/2024.
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	22.07.24
Date on which the typed draft is placed before the dictating Member	22.07.2024
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	