

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
And
SHRI NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER

ITA.No.5675/Del./2018
Assessment Year : 2008-09

Sh Rishi Prakash 9, Yadav Nagar, Near Samaipur Badli, New Delhi – 110 042. PAN : AGVPP6251B	vs.	The Income Tax Officer, Ward 40(4), Civic Centre Delhi – 110 002
(Appellant)		(Respondent)
For Assessee :	-None-	
For Revenue :	Sh. NC Swain, CIT-D.R.	
Date of Hearing :	16.06.2022	
Date of Pronouncement :	13.09.2022	

ORDER

PER ANIL CHATURVEDI, A.M.

This appeal by assessee has been directed against the order of the Ld. CIT(A)-XXIV, New Delhi, dated 30.12.2011, relating to the A.Y. 2008-09.

2. The relevant facts as culled out from the material on record are as under :

2.1. The assessee is an individual who filed his return of income for A.Y. 2008-09 on 31.03.2009 declaring income

at Rs.4,46,210/-. The case was selected for scrutiny assessment. The A.O. issued notice and questionnaire under sections 143(2) and 142(1) of the I.T. Act, 1961 and served on the assessee by speed post. Thereafter, the A.O. provided several opportunities to the assessee for production of requisite documentary evidences vide notices issued under section 142(1) of the I.T. Act, 1961. AO noted that assessee did not file the details called for by him. Since the assessee neither appeared nor filed a single detail before the A.O. the A.O. computed the total income of the assessee at Rs.4,79,03,090/- by making various additions namely on account of G.P. rate and expenses and addition on account of sundry creditors and other account against the declared income of Rs.4,46,210/- by passing assessment order on 15.12.2010 under section 144 of the I.T. Act, 1961.

2.2. Aggrieved by the order of the A.O. the assessee carried the matter before the Ld. CIT(A). CIT(A) vide order dated 30.12.2011 in Appeal No.205/10-11 dismissed the appeal of the assessee. While dismissing the appeal, CIT(A)

at para 4 of his order has noted that notice u/s 250 of the Act was issued on various occasions through Registered Post at the assessee's address but the notices were returned back by the postal authorities. On the merits of additions, he noted that in the absence of any explanation regarding the creditors and claim of expenses with supporting documents such as bills and vouchers, he find no reason to differ from the findings of the A.O. and accordingly, the Ld. CIT(A) confirmed the order of the A.O.

3. Aggrieved by the order of the Ld. CIT(A), the assessee is now in appeal before the Tribunal by raising the following grounds :

1. *"That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the order of assessment framed u/s 144 of the Act determining the income of the appellant at Rs. 4,78,08,488/- as against the returned income of Rs. 4,46,210/-.*

2. *That the learned Commissioner of Income Tax (Appeals) has grossly erred in law in disposing off the appeal of the appellant ex-parte without providing the appellant a proper and meaningful opportunity of being heard which is in violation of the principles of natural justice and hence unsustainable in law.*
3. *That the learned Commissioner of Income Tax (Appeals) has grossly erred in failing to appreciate that none of the notices issued were served on the appellant as appellant had closed its business and the premises from where it was carrying on its business was a rented premises and after the closure of the business, it had vacated the premises.*
4. *That the learned Commissioner of Income Tax (Appeals) has grossly erred in upholding the rejection of the books of account and enhancement of the GP rate, whereby an addition of Rs.16,48,075/- was made.*

5. *That the learned Commissioner of Income Tax (Appeals) has grossly erred in upholding the addition of Rs.4,50,000/- on account of alleged unexplained to capital, failing to appreciate that aforesaid addition was unsustainable on the facts and circumstances of the instant case.*
6. *That the learned Commissioner of Income Tax (Appeals) has grossly erred in upholding the addition of Rs.11,93,175/- on account of addition to unsecured loan failing to appreciate that aforesaid addition was unsustainable on the facts and circumstances of the instant case.*
7. *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in upholding the addition of Rs.3,10,93,280/- on account of non-failing of confirmation of the sundry creditors failing to appreciate that aforesaid addition was unsustainable on the facts and circumstances of the instant case.*
8. *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in upholding the*

addition of Rs.5,18,560/- on account of advances from customers failing to appreciate that aforesaid addition was unsustainable on the facts and circumstances of the instant case.

9. *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in upholding the addition of Rs.30,00,000/- on account of sum received from Shri Goyal Failing to appreciate that aforesaid addition was unsustainable on the facts and circumstances of the instant case.*
10. *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in upholding the addition of Rs.1,00,00,000/- on account allegedly not disclosing the source of the investment in the land situated at Yusuf Sarai failing to appreciate that aforesaid addition was unsustainable on the facts and circumstances of the instant case.*

The above grounds of appeals are independent of, and without prejudice to each other.

That the appellant craves leave to add, alter, amend or withdraw all or any grounds herein or

add any further grounds as may be considered necessary either before or during the hearing of these grounds.”

4. The case file reveals that the Registry issued defect notice to assessee for compliance duly intimating that appeal fees is short by Rs.10,000/-, Tribunal Fee Challan not filed, Grounds of appeal before Ld. CIT(A) not filed. However, there were no compliance from the side of the assessee. The case file reveals that since Nov 2021, the matter was listed for hearing on three occasions but on all those dates there was no appearance by the assessee or his Counsel. The notices issued through RPAD were also returned undelivered by postal authorities. Preferring an appeal does not mean mere formally filing it but also taking all the steps to effectively pursue the appeal. The conduct of the assessee in not appearing before the lower authorities and the Tribunal shows the negligent approach of the assessee. The fact that the assessee has not appeared before the lower authorities and has also not appeared before the Tribunal despite various opportunities granted to the

assessee shows that the assessee is not serious in pursuing the appeal filed by him. In the absence of any co-operation from the side of the assessee, we don't find any reason to keep the matter pending before us. Further, the defects pointed out to the assessee by the Registry has also not been set right by the assessee even after more than 3 years from the filing of appeal. In such circumstances, we, therefore, have no option but to dispose of the appeal after considering the material available on record and after hearing the Ld. D.R.

5. On the basis of material available on record, AO at para 5 of the order has noted that assessee on the sale of Rs.41,32,29,960/-, had shown gross profit of 3.47%. He noted that despite various opportunities granted to assessee to produce the books of accounts and supporting evidences, assessee did not produce any evidence or books of accounts. He therefore concluded the purchase and sales to be not verifiable. He thereafter held the G.P. of 3.47% shown by the assessee to be too low and held the G.P. at 5% to be

appropriate. He accordingly made addition on account of G.P. at Rs.8,75,486/- (being the G.P. calculated @5%).

6. AO also noted that assessee has claimed expenses of Rs.7,72,589/-. In the absence of books of accounts and bills/vouchers, AO disallowed expenses amounting to Rs.7,72,589/-. AO for the reasons stated in the order made additions on various other counts.

7. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now in appeal before the Tribunal.

8. Before us, the Ld. D.R. strongly supported the orders of the lower authorities contending *inter alia* that since the assessee has no case to put forth his grievance, he did not chose to appear before the Department, therefore, the orders of the Ld. CIT(A) should be confirmed.

9. We have heard the Ld. D.R. and perused the material on record. We find that before the lower authorities the assessee did not appear and, therefore, the authorities had no option, except to pass ex-parte orders under section 144 of the I.T. Act, 1961 basing on the material available with them. However, when the appeal is filed before the Tribunal by the assessee himself against the orders of the lower authorities, it is expected that the assessee may put forth some documentary evidences in support of his contentions to decide the appeal as it is the duty of the assessee to lead evidence in support of its claim and for the adjudicating authority to decide upon the sustainability of the claim on the basis of the evidence led by the parties before it. However, the assessee did not appear before the Tribunal despite numerous adjournments allowed and notices issued through RPAD. In case of any change of address, it is for the assessee to file revised Form No.36 duly mentioning the new address as the notice issued by the Registry was returned unserved with the postal remark "Incomplete address". No material has been placed by assessee to controvert the findings of lower authorities. In

this view of the matter and in absence of any contrary material brought on record to rebut the findings of lower authorities, we find no reason to interfere with the order of CIT(A) and thus **we dismiss the grounds of the assessee.**

10. **In the result, appeal of the assessee is dismissed.**

Order pronounced in the open court on 13.09.2022.

Sd/-
[N.K. CHOUDHARY]
JUDICIAL MEMBER

Sd/-
[ANIL CHATURVEDI]
ACCOUNTANT MEMBER

Delhi, Dated 13th Sep, 2022

PY/-

Copy to

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT "SMC" Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,
Delhi.