

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA No.2766/Del/2017
Assessment Year: 2007-08

Shivkala Developers Pvt. Ltd., 203, Turab Nagar, Ghaziabad	Vs.	ITO, Ward-23(2), New Delhi
PAN :AADCP7028D		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Sh. Prakash Dubey, Sr. DR

Date of hearing	08.07.2021
Date of pronouncement	16.07.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 15/02/2016 passed by the learned Commissioner of Income Tax (Appeals)-28, New Delhi [in short 'the Learned CIT(A)'] for assessment year 2007-08 raising following grounds:

- 1. The order of the Learned CIT(Appeal) is bad in law and on the facts of the case.*
- 2. That there was no service of notices on the alleged dates as specified in the impugned order.*

3. *That the Honourable ITAT, Delhi Benches, 'G' New Delhi has communicated its appeal order at D-162, Sector 10, Noida-201301 as mentioned therein.*
4. *That the learned CIT(A) -28, has sent all the notices at the old address i.e. LG 1 & 3, R-23, Nehru Enclave, New Delhi-110019 and the same remain unserved. So no reasonable opportunity was given to the assessee company.*
5. *That the appeal has been filed after getting the certified copy of the order from the Learned Income Tax officer, Ward 23(2), New Delhi.*
6. *That the Learned Assessing Officer has made an addition of Rs.8,85,13,245/- for increase in the assets of the assessee company. As such he erred in the making the addition u/s 68 of the Income Tax Act, 1961 which was contrary to law.*
7. *That the alleged cash deposit of Rs 10,00,000/- has automatically increased assets side of the Balance Sheet. The addition of the same u/s 69 of The Income Tax Act, 1961 would amount to taxing the same item twice.*
8. *That the assessee craves leave to add, amend or withdraw any grounds of appeal at the time or before the hearing of appeal."*

2. Briefly stated facts of the case are that the assessee company filed its return of income for the year under consideration on 02/11/2007 declaring current year loss of ₹ 95,534/- and unabsorbed depreciation of ₹ 2800/- which was carried forward to subsequent years. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued. Though the assessee filed computation of income, balance sheet and profit and loss account for the year under consideration, however, thereafter there was no compliance on the part of the assessee and therefore the Assessing Officer issued a final so-called notice asking the assessee to explain source of increase of assets of ₹ 8,85,13,245/- and deposit of ₹ 10 lakh in "M/s. Bhagyodya Urban Co-operative Bank" and failure to do so, same might be treated as income of the assessee. There

was no compliance on the part of the assessee, and therefore, the Learned Assessing Officer completed assessment in terms of section 144 of the Act (best judgment assessment) after making addition of ₹ 8,95,13,245/- Aggrieved, the assessee filed appeal before the Learned CIT(A), however, same has been dismissed due to non-representation by the assessee.

3. None appeared on behalf of the assessee before us also. But a written request has been filed by Sh. Anup Kumar claiming to be Insolvency Professional of Shivkala Developers Private Limited, wherein he requested for adjournment of the appeal. However, looking to *ex parte* order of the Learned CIT(A), we have heard the Learned Departmental Representative and perused the relevant material on record and proceeded to adjudicate the appeal.

4. We find that the Ld. CIT(A) has dismissed the appeal of the assessee observing as under:

“4. I have considered the grounds raised in appeal and the facts of the case. During the appellate proceedings, as stated after issuance notified dated 24.09.2015 no appearance and no submission was made by the appellant, after that the following notices also issued through Speed Post on the address (Shivkala Developers Pvt. Ltd., LG-1 & 3, R-23, Nehru Enclave, New Delhi-110019) given by the appellant.

<i>Date of issue of notice</i>	<i>Fixed for</i>	<i>Remarks</i>
<i>24.09.2015</i>	<i>09.10.2015</i>	<i>None attended nor filed any adjournment.</i>
<i>26.11.2015</i>	<i>09.12.2015</i>	<i>None attended nor filed any adjournment.</i>
<i>21.12.2015</i>	<i>19.01.2016</i>	<i>None attended nor filed any adjournment.</i>

4.1 In view of the facts stated above, it is observed that the assessee was given sufficient and reasonable opportunities to represent his case before the appellate authority but nobody attended the proceedings nor filed adjournment application. The notices were sent by Speed Post for which it is presumed that

assessee must have received them within 3 days. But he never filed any written submission nor application for adjournment. In view of the indifferent approach, I find that no useful purpose would be served by keeping the appeal proceedings pending indefinitely. Therefore, it is presumed that the assessee has nothing to appeal against the additions made by the Assessing Officer.

4.2 Further, in view of the provisions of section 251(1)(c), the Commissioner of Income Tax appeals has the power to dispose of an appeal "in any other case, he may pass such orders in the appeal as he thinks fit". In the instant case there is enough ground of non appearance of the appellant to decide the matter ex-parte, the appeal is decided on the basis of material available on record.

5 Ground no 1 and 2 taken by the appellant is general in nature . During the course of the appellate proceeding even after been given reasonable opportunity the appellant has failed to explain how the order passed was without jurisdiction, contrary to law . Therefore ground no 1 and 2 taken by the appellant is dismissed.

6. Ground no 3 taken by the appellant is against (1) addition of Rs. 8,85,13,425/ made by the assessing officer under section 68 of the Act and (ii) Addition of Rs. 10,00,000 made by the assessing officer under section 69 of the Act. In the case under consideration the Assessing officer has made addition of Rs. 8,85,13,425/ under section 68 of the Act as the assessee failed to explain the source of share capital and loan received during the year under consideration. Further addition Rs. 10,00000/- has been under section 69 of the Act as the assessee failed to explain the source of cash of Rs. 10,000,00/- deposited in bank account of the assessee company held on 06.07,2006 . During the course of the appellate proceeding even after been given reasonable opportunity the appellant has failed to explain the source of share capital and loan received during the year and cash deposited in the bank account . Hence, the action of the AO is upheld and the ground no 3 taken by the appellant is dismissed."

4.1 In the grounds raised before us, the assessee has submitted that there was a change of address whereas the Ld. CIT(A) sent all the notices at the old address and therefore, no compliance could be made before the Learned CIT(A). Looking to the reasonable cause in putting non-appearance before the Ld. CIT(A), we are of the opinion that assessee must be provided one opportunity to

explain its affairs. In view of the above facts and circumstances and in the interest of the justice, we set aside the order of the Ld. CIT(A) and restore the matter back to him for deciding afresh. Both the assessee and the Assessing Officer shall be provided adequate opportunity of being heard. In the form No. 36 filed before the Tribunal, the assessee has provided its address as 203, Turab Nagar, Ghaziabad (UP) -201001. In the case of the assessee, insolvency proceedings have been initiated and Sh. Anup Kumar has been appointed as Interim Resolution Professional (IRP) and his details are as under:

- (i) Regn. No. IBBI/IPA-002/IP-N00333/2017-18/10911
- (ii) Address: Lawyers Chamber No. 734, Western Wing, Tis Hazari Court, Delhi;
- (iii) Email: sachanlawanalyst@gmail.com
- (iv) Mobile No. 9811622913

4.2 The Ld. CIT(A) may serve notice accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open court on 16th July, 2021.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 16th July, 2021.

RK/- (DTPC)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

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