

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D": NEW DELHI**

**BEFORE  
SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 3914/Del/2016  
Asstt. Year: 2012-13

Kailash J. Aeren Aerens Estate, Mall Road, Behind Pocket-3, Vasant Kunj, New Delhi – 110 070 PAN AAHPG0452D <b>(Appellant)</b>	Vs.	ACIT Central Circle -9 New Delhi. <b>(Respondent)</b>
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Assessee by:	Shri Rajeshwar Painuly, CA
Department by :	Shri Ajay Kumar Sr. DR
Date of Hearing	05/10/2021
Date of pronouncement	05/10/2021

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal is preferred by the assessee against order dated 28.3.2016 passed by the Ld. Commissioner of Income Tax (Appeals) 25, Delhi {CIT(A)} and pertains to assessment year 2012-13.

2.0 Brief facts of the case are that a search and seizure operation u/s 132/133A of the Income Tax Act, 1961 (hereinafter called "the Act") was conducted on 17.8.2011 in the case of the assessee along with other cases of the group at various residential and business premises. All the cases were centralised. Notice u/s 143(2) of the Act was issued and the return of income was filed declaring income of Rs. 5,05,253/-. During the course of search at the residence of the assessee, cash amounting to Rs. 4,96,450/- was found whereas cash amounting to Rs. 42,000/- was found at the office of M/s. Aerens Jai Realty Pvt. Ltd. at Chiranjee Tower, Nehru Place, New Delhi. The cash as per the books of the company was Rs, 9,26,761/- and in the statement recorded during the course of survey, it was stated that the balance cash was given to the assessee. Accordingly, since the assessee was a major share holder of the company M/s. Aerens Jai Realty Pvt. Ltd., the differential cash amounting to Rs. 8,84,761/- was added to the income of the assessee as deemed income. The assessment was completed at an income of Rs. 13,90,014/-.

3.0 The appeal of the assessee before the Ld. First Appellate Authority came to be dismissed for the reason that as per the Ld. First Appellate Authority, the assessee had failed to produce the evidence and attend the appellate proceedings.

4.0 The assessee has now approached this Tribunal challenging the dismissal of assessee's appeal by the Ld. First Appellate Authority and has raised the following grounds of appeal:-

1. *"The learned CIT (A) erred in law and on facts in dismissing the appeal against the order of assessing officer without giving the adequate opportunity to the appellant.*
2. *The learned CIT (A) erred in law and on facts in dismissing the appeal against the order of assessing officer and confirming the addition of Rs. 8,84,761/- arbitrarily and without going into merit that amount of Aerens Jai Realty Pvt. Ltd. was not held by the appellant as loans and advances hence provisions of section 2(22)(e) are not applicable. Thus, order of the learned CIT (A), passed merely on surmises and conjecture should be reversed.*
3. *The learned CIT (A) erred in law and on facts in rejecting the ground of the appellant on non-applicability of provisions of Section 234B of the Income Tax Act despite the fact that said provisions are not applicable. Thus, order of the learned CIT (A), passed merely on surmises and conjecture should be reversed.*
4. *The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing."*

5.0 At the outset, Ld. Authorised Representative submitted that the Ld. CIT(A) had dismissed the assessee's appeal without giving a proper opportunity to the assessee to present his case. Ld. AR prayed that the assessee may be given another opportunity to present his case.

6.0 Per contra, the Ld. Sr. Departmental Representative, while referring to the order of the Ld. CIT(A), submitted that several notices had been issued by the office of the Ld. CIT(A) requiring the assessee to appear before the Ld. First Appellate Authority and submit the required documents. While pointing out to paragraphs 4.1 to 4.8 of the impugned order, the Ld. Sr. Departmental Representative submitted that as many as eight opportunities had been given by the Ld. First Appellate Authority between 23.9.2015 and 14.3.2016 to the assessee to appear before the Ld. CIT(A) but no compliance was made. Ld. Sr. Departmental Representative submitted that, therefore, the Ld. CIT(A) had no option but to decide the case ex parte qua the assessee. Ld. Sr. Departmental Representative submitted that no further opportunity was required to be given to the assessee.

7.0 We have heard rival submissions and have also gone through the records. We do agree with the submissions of the Ld. Sr. Departmental Representative that the assessee has been grossly negligent in complying with the notices issued from time to time by the office of the Ld. CIT(A). While taking a strong exception to the conduct of the assessee, we do feel that in the

interest of substantial justice the assessee should get another opportunity. Accordingly, while imposing a cost of Rs. 5000/- on the assessee to be deposited in the Prime Minister's National Relief Fund within one month of this order, we restore this file to the office of the Ld. CIT(A) for being adjudicated afresh after giving proper opportunity to the assessee. The assessee is directed to submit proof of deposit of Rs. 5000/- in the Prime Minister's National Relief Fund before the Ld. CIT(A) and we also direct the assessee to avail this opportunity without fail this time failing which the Ld. First Appellate Authority shall be at liberty to decide the issue in accordance with law ex parte qua the assessee.

8.0 In the final result, the appeal of the assessee stands allowed for statistical purposes.

**Order pronounced in court at the close of virtual hearing on  
05/10/2021.**

**sd/-**

**(R.K. PANDA)  
ACCOUNTANT MEMBER**

**sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 05/10 /2021

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

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