

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "SMC-1" BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.2553/Del/2019**

**Assessment Year : 2015-16**

Qube Services Pvt.Ltd., C-23, 24, Sant Ram Road, Asola, Fatehpur Bheri, New delhi-110074. PAN-AAACQ3346G	vs	ITO, Ward-20(3), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>		Sh. Prasanna Agiga, CA
<b>Respondent by</b>		Sh.Gaurav Pundir, Sr. DR
<b>Date of Hearing</b>		19.07.2021
<b>Date of Pronouncement</b>		23.07.2021

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee for the assessment year 2015-16 is directed against the order of Ld. CIT(A)-38, New Delhi dated 24.01.2019.

The assessee has raised following grounds of appeal:-

1. *" The order of the assessing officer is erroneous on the facts and in the law. On the fact and in the circumstances of the case he ought to have accepted the returned income.*
- 2) *The learned assessing officer is not justified in treating the Rent Payment by the appellant as his income on the plea that the supporting documents called "Rent Agreement" has been not being produced during such short of time. On the fact and in the circumstances of the case he ought to have accepted that Rent payment was requirement of business and it cannot happen without the payment of the said rent;*

- 3) *Initially Appeal was filed against the order dated 20<sup>th</sup> December 2017 for AY 2015-2016 passed by ITO, ward 20(3), New Delhi u/s 143(3) of the Income tax act, 1961 with CIT(A)-07, New Delhi on 11<sup>th</sup> January 2018. The hearing date was fixed on 25/09/2018 and subsequently we were communicated to present on 17th October 2018. We have presented before the CIT (A)-7 ,New Delhi and explain the case accordingly the fact and documents like rental agreement of warehouses to Sh.Sameer Kumar Srivastava Commissioner of Income tax (A) - 07. On the later stage we were asked to submit the soft copy of documents on email id citappeals7newdelhi@gmail.com and we had made submission the whole documents as on 5<sup>th</sup> November 2018(email copy is enclosed for the references). After some time we have visited to department for enquiry of the development of the cases and we were intimated that it had send to AO for the considerations. As we have not received any communication from the department we have followed during the end of December 2018 and came to know that our case have been transferred to CIT(A)-38, New Delhi without having any information to us .The same day we have visited to CIT-(A)-38 ,New Delhi and also came to know that Madam (Smt.Shefali Swaroop) was not in the office and also we had intimated that department will communicate to us regarding the cases. As on 24th Jan 2019,We have received a call and being intimated that we were supposed to present today at 11 AM as we were not in town requested to fix the meeting as on 28<sup>th</sup> Jan 2019 after the Republic day holidays (I also observed that department had send a Mail regarding this which was overlooked by us due to not available in town) . I have visited the office as on 28<sup>th</sup> at 11 AM and had a meeting with Madam CIT(A) ,she informed that will update you the case as the file was not available at that time and asked to come next day i.e 29<sup>th</sup> January 2019 at 11 AM. I have visited that day and meet to Madam and being*

*informed that we were not attended the office in spite of several letters so we have dismissed the case accordingly.*

4. *That the Commissioner of Income Tax (Appeals) Delhi CIT(A) - 38 has erred in law as well as in facts in dismissing the appeal for want of Prosecution because: -*
  - a. *No Notice of hearing fixing the date for 21st December 2018 was ever received.*
  - b. *No Notice of hearing fixing the date for 17<sup>th</sup> January 2019 was ever received.*
  - c. *No Notice of hearing fixing the date for 25<sup>th</sup> January 2019 was ever received.*
- 5) *Under the statutory provision of section 250 it is essential to fix a date and place of hearing of the appeal by giving the notice through the appellant, but no such notice was served on the Assessee or on his authorised representative.*
- 6) *That the order of the CIT(A)-38 ,New Delhi is liable to be quashed being bad in law as reasonable and sufficient opportunity was not provided to the Assessee/appellant.*

*We would like to draw your kind attention on the below honourable ITAT cases:-*

*(IN THE INCOME TAX APPELATIVE TRIBUNAL DELHI BENCH 'SMC', NEW DELHI - BEFORE SH. N.K.SAINI, ACCOUNTANT MEMEBR -ITA NO. 2620/DEL/2018 - ASST YEAR 2010-2011)*

*TRIBUNAL HAVE CONSIDERTED THE SUBMISSION OF BOTH THE PARTIES AND CAREFULLY GONE THROUGH THE MATERIAL AVIALBLE ON TH ERECORD. IN THE PRESENT CASE, IT IS NOTICED THAT THE AO ISSUED NOTICED UNDER SECTION 148 AND 142(1) OF THE ACT AT THE ADDRESS D- 60, NOIDA AUTHORITY , SECTOR – 108, NOIDA. HOWEVER , THE ASSESSEMENT WAS FRAMED BY MENTIONING THE ADDRESS OF THE ASSESSEE AS P-3, SHOP NO LGF 20, KRISHNA APRA*

*PLAZA SECTOR -18, NOIDA, THEREFORE THERE IS FORCE IN THE SUBMISSION OF THE ASSESSEE THAT THE NOTICE UNDER SECTION 148 AND 142(1) OF THE ACT WERE ISSUED AT THE WRONG ADDRESS AND CIT (A) HAS ALSO PASSED THE IMPUGNED ORDER WITHOUT BRINGING ANY MATERIAL ON RECORD THAT THE NOTICE FOR HEARING WAS SERVED UPON THE ASSESSEE. IT IS WELL SETILED THAT NOBODY SHOULD CONDMNED UNHEARD AS PER THE MAXIM "AUDI ALTERAM PARTEM".*"

2. Facts giving rise to the present appeal are that the case of the assessee was picked up for scrutiny and the assessment was framed u/s 143(3) of the Income Tax Act, 1961 ("the Act") vide order dated 20.12.2017. While framing the assessment, the Assessing Officer disallowed the expenses of Rs.33,16,500/- and thus, computed his income at Rs.35,26,039/- against the declared income of Rs.2,08,513/-.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A). Before Ld.CIT(A) also, there was no representation on behalf of the assessee. It is recorded by the Ld.CIT(A) that three notices were sent but no one appeared on behalf of the assessee. Therefore, he sustained the addition made by the Assessing Officer.

4. Aggrieved against this, the assessee preferred present appeal before this Tribunal.

5. Ld. Counsel for the assessee submitted that the authorities below were not justifying in making the addition and sustaining the same. Ld. Counsel for the assessee further submitted that Ld.CIT(A) ought to have been given an opportunity to the assessee.

6. On the contrary, Ld. Sr. DR opposed these submissions and supported the order of the authorities below.

7. I have heard contentions of both the parties and perused the material available on record. After considering the material available on record, I deem it proper to restore the appeal to the Ld.CIT(A) to decide it afresh after giving reasonable opportunity to the assessee in the interest of principles of natural justice and therefore, set aside the impugned order. However, the assessee is hereby directed not to seek adjournment without any reasonable cause. Thus, grounds raised by the assessee in this appeal are allowed for statistical purposes.

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

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 23<sup>rd</sup> July, 2021.

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\*Amit Kumar\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI