

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

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 4868/Del/2016 : Asstt. Year : 2007-08**

Sh. Sunil Kumar, S/o Sh. Ramesh Kumar, V.P.O. Buchawas, Mohindergarh	Vs	Income Tax Officer, Ward-2, Narnaul
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. CMGPK7312B</b>		

**Assessee by : Sh. Gautam Jain, Adv.**

**Revenue by : Sh. Amrit Lal, Sr. DR**

<b>Date of Hearing : 18.05.2017</b>	<b>Date of Pronouncement : 30.05.2017</b>
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**ORDER**

This is an appeal by the assessee against the order dated 31.03.2016 of Id. CIT(A)-2, Gurgaon.

2. Following grounds have been raised in this appeal:

*“1. That the learned Commissioner of Income Tax (Appeals) 2, Gurgaon has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/143(3) of the Act without appreciating that, statutory pre-conditions for neither the initiation of proceedings and, nor the completion of assessment under the Act had been fulfilled and, therefore, the same were without jurisdiction and hence deserve to be quashed as such.*

*1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that, there was no*

*material on record on the basis of which, it could be held that, there was any reason to believe with the learned Income Tax Officer that, income of the appellant company had escaped assessment and, in view thereof, the proceedings initiated were illegal, untenable and therefore, unsustainable.*

*2. That the learned Commissioner of Income Tax (Appeals)-2, Gurgaon has further erred both in law and on facts in upholding an addition of Rs. 1,65,000/- representing deposits in the bank account and held to be unexplained cash credit u/s 68 of the Act.*

*3. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding an addition of Rs. 3,12,000/- representing alleged receipts of the appellant on account of rent of agriculture land which comes under the purview of agriculture income as defined u/s 2(1A)(a) of the Act.*

*4. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in dismissing the appeal as ex-parte on account of non compliance of AR of the appellant and as such the appeal has been decided without providing any opportunity to the appellant much less fair, reasonable and meaningful opportunity and as such the order passed is contrary to the principles of natural justice and, therefore a nullity.*

*5. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest of Rs. 39,123/- u/s 234A of the Act and of Rs. 44,438/- u/s 234B of the Act*

*which are not leviable on the facts and circumstances of the case of the appellant.*

*It is therefore, prayed that, it be held that assessment made by the learned Income Tax Officer and sustained by the learned Commissioner of Income Tax (Appeals) be quashed and, further additions so upheld by the learned Commissioner of Income Tax (Appeals) alongwith interest levied be deleted and appeal of the appellant be allowed.”*

3. Vide Ground No. 4, the main grievance of the assessee relates to the dismissal of appeal of the Id. CIT(A) *ex-parte* without providing opportunity of being heard.

4. Facts of the case in brief are that the AO on the basis of AIR information issued notice u/s 148 of the Income-tax Act, 1961. In response, the assessee filed the return of income on 21.04.2014 declaring an income of Rs.92,240/-. However, the assessment was framed by the AO at an income of Rs.2,57,810/- by making an addition of Rs.1,65,600/-. He also added agricultural income of Rs.3,20,000/-.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) who sustained the addition made by the AO by passing the *ex-parte* order.

6. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that the Id. CIT(A) did not provide

opportunity of being heard and passed the *ex-parte* order and simply stated that none attended. It was submitted that the notice of hearing was not served upon the assessee. Therefore, the *ex-parte* order passed by the ld. CIT(A) deserves to be set aside.

7. In his rival submissions the ld. DR supported the orders of the authorities below.

8. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the ld. CIT(A) mentioned in the impugned order that the notice of hearing was issued on 09.03.2016 and none attended when the case was fixed for hearing on 23.03.2016. He also mentioned that on 11.03.2016, Sh. Parveen Kumar, CA authorized representative of the assessee, filed a power of attorney and requested for demand notice. From the above observations of the ld. CIT(A), it appears that authorized representative of the assessee appeared before the ld. CIT(A) on 11.03.2016 and even than the appeal was decided *ex-parte*. It is well settled that nobody should be condemned unheard as per *maxim "audi alteram partem"*. I, therefore, keeping in view the principles of natural justice, deem it appropriate to set aside the impugned order and

remand the issue back to the file of the ld. CIT(A) to be decided afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 30/05/2017)

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 30/05/2017**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**