IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SH.PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A .No.-654 to 656/Del/2013
(ASSESSMENT YEAR-2003-04 & 2005-06)

Bal Kishan Saraf, 1290, Katra Dhulla, Chandni Chowk, Delhi. PAN-AAHPS3659Q **(APPELLANT)**	vs	ACIT, Central Circle-II, **(RESPONDENT)**

Appellant by	**Sh.Ashu Goel, CA**
Respondent by	**Sh. K.K.Jaiswal, DR**

Date of Hearing	**31.03.2016**
Date of Pronouncement	**12.05.2016**

ORDER

PER DIVA SINGH, JM

By the present appeals, the assessee assails the correctness of the separate order dated 10.12.2012, 10.12.2012 and 11.12.2012 respectively of CIT(A)-III, New Delhi pertaining to 2003-04 & 2005-06 assessment years.

2. Inviting attention to the copy of the grounds raised in each of these appeals. It was his submission that Ground No.6 in ITA No.654 & 656/Del/2013 raised by the assessee is identical to Ground No.9 raised in ITA No.655/Del/2013 which read as under:-

> *6. "That ld.CIT(A) is not justified in not providing opportunity to appellant to submit its comments towards remand report called by him from Ld.AO at the back of appellant. Hence the action of Ld.CIT(A) is against the principle of natural justice and contrary to provisions of law, as such the same needs to be undone and any addition confirmed on the basis of same needs to be deleted."*

3. In support of the said submission, attention was invited to page 25 of the impugned order in 2003-04 AY in para 6.3.1. It was submitted that reference

therein has been made to the Remand Report of the AO dated 03.12.2012. Inviting attention to the impugned order it was submitted that the CIT(A) states that opportunity was given to the assessee on 03.12.2012 on which date the assessee did not attend. Inviting attention to first page of the impugned order it was pointed out that the date of the order is 10.12.2012. Accordingly based on these dates which are coming out from the impugned order itself it was submitted that evidently the Remand Report obtained from the AO dated 03.12.2012 by the CIT(A) was never confronted to the assessee. Accordingly in view of these peculiar facts and circumstances, the impugned order based on the same it was submitted is bad in law and deserves to be set aside. In the remaining years also it was submitted the position remained the same as the fact that the Remand Report has been considered without confronting to the assessee is evident on the face of the record itself. As an illustration, attention was invited to page 23 of the impugned order in 2004-05 AY where again reference is made to the Remand Report dated 03.12.2012. None was present on behalf of the assessee. The order has been passed on 10.12.2012.

3.1. Considering these facts available on record, the Ld.AR requested that in order to correct the deficiencies, the issues may be restored to the file of the CIT(A) with the direction to confront the evidences relied upon and pass a speaking order thereafter.

4. The Ld. Sr. DR considering the material available on record had no objection if the said prayer of the assessee was accepted.

5. We have heard the rival submissions and perused the material available on record. It is seen that as a result of search and seizure action u/s 132 in the Sh.

Ram Hari Ram Group of cases on 26.02.2009, the assessee was also covered under the said search. The additions made by the AO were challenged in appeal before the CIT(A). For the purposes of deciding the present issue in these appeals, it is not necessary to refer to the nature of additions made suffice it say that on a challenge posed to them by the assessee as fundamental as that the seized documents do not pertain to the assessee amongst other arguments, these issues it is evident were decided relying on the basis of the Remand Report filed by the AO and admittedly not confronted to the assessee. Accordingly in the peculiar facts and circumstances of the case, we hold that the impugned order is violative of the rules of natural justice and the violation being so fundamental and basic deserves to be addressed. It cannot be over-emphasized that the "Right to be heard is an important right to which a party who is faced with an adverse view is entitled to. *"Audi alteram partem"* is one of the most famous and celebrated Rules of Natural Justice. The principles of natural justice are those which have been laid out by the Courts as being the minimum protection of the rights of an individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. A careful perusal of the consistent judgements of the Apex Court would show that it has consistently been held that the Rules of natural justice are not embodied rules and the said phrase is not and cannot be capable of a precise definition. The underlying principle of natural justice evolved under the common law is to check arbitrary exercise of power by the State or its functionaries. Accordingly, the principle by its very nature implies the duty to act fairly i.e. fair play in action must be evident at every stage. Fair play demands that nobody

shall be condemned unheard. In the celebrated judgement of the Apex Court in the case of A.K.Kraipak –vs- Union of India (1969) 2 SCC 262, it is observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The said rules are means to an end and not an end in themselves and though it is not possible to make an exhaustive catalogue of such rules however it can be readily said that there are two basic maxims of natural justice namely *"audi alteram partem"* and *"nemo judex in re sua"*. In the present facts of the case we are concerned with the maxim *"audi alterm partem"* which again may have many facets two of them (a) notice of the case to be met; and (b) opportunity to explain. Their Lordships have cautioned that these rules cannot be sacrificed at the altar of the administrative convenience or celebrity. Thus, considering the afore-mentioned statutory provision and the principles of natural justice, the issue is restored back tot eh file of the CIT(A). Needless to say that before passing the order, a reasonable opportunity shall be provided to the assessee. While so directing it is hoped that the opportunity so provided is not abused by the assessee and is utilized in good faith as failing which the Ld. CIT(A) would be at liberty to pass a speaking order in accordance with law on the basis of material available on record.

5.1. Accordingly, in view of the above patent and obvious legal impediments, we deem it appropriate to set aside the impugned order in each of the three years and restore the issue back to the file of the CIT(A) with the direction to pass a speaking order in accordance with law after confronting to the assessee the Remand Report taken on record.

6. In the result, the appeals of the assessee are allowed for statistical purposes.

The order is pronounced in the open court on 12 May, 2016.

Sd/- **Sd/-**

(PRASHANT MAHARISHI) **(DIVA SINGH)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**
Dated: 12/05/2016
Amit Kumar
Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI