

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

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| | ITA Nos. 3889 & 3890/DEL/2014 | |
| | A.Y. : 2005-06 | |
| SHRI SAHAB SINGH, CN No. 340, HOUSE NO. 89, VILLAGE BAMNOLI P.O. PALAM DELHI - 110 007 (PAN: DBHPS1856P) | VS. | ITO, WARD 27(3), NEW DELHI |
| (APPELLANT) | | (RESPONDENT) |

Assessee by : Sh. K.K. Agarwal, Adv.
Department by : Sh. N.K. Bansal, Sr. DR

ORDER

PER H.S. SIDHU : JM

These Appeals by the Assessee are directed against the Orders of the Ld. Commissioner of Income Tax(A)-19, New Delhi both dated 31.03.2014 pertaining to assessment year 2005-06. Since the issues involved in these appeals are inter-connected, hence, the appeals were heard together and are now being consolidated and disposed of by this common order for the sake of convenience.

2. The grounds raised in ITA No. 3889/Del/2014 read as under:
 1. The Ld. ITO, Ward 27(3) wrongly and baselessly disallowed the payment realized in my account and added in income without considering facts.

2. The Ld. ITO, Ward 27(3) has not given any opportunities to the appellant for producing required evidence for assessment and also notices were not served properly to the appellant's address for the assessment, the Ld. AO framed the assessment u/s. 147/144 of the I.T. Act, 1961.
 3. That this action of ITO is undue hardship to the appellant.
 4. In the end it is prayed that true assessment order may kindly be modified after giving an opportunities for the requisites submission by appellant.
3. The grounds raised in ITA No. 3890/Del/2014 read as under:
1. The Ld. ITO, Ward 27(3) wrongly and baselessly disallowed the payment realized in my account and added in income without considering facts.
 2. The Ld. ITO, Ward 27(3) has not given any opportunities to the appellant for producing required evidence for assessment and also notices were not served properly to the appellant's address for the assessment, the Ld. AO framed the penalty order u/s. 271(1)© of the I.T. Act, 1961.
 3. That this action of ITO is undue hardship to the appellant.
 4. In the end it is prayed that true assessment order may kindly be modified after giving an opportunities for the requisites submission by appellant.

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4. The facts narrated by the revenue authorities are not disputed by both the parties, hence, they are not repeated here for the sake of brevity.

5. At the time of hearing, Shri K.K. Agarwal, Advocate/Ld. Counsel for the assessee draw our attention towards the assessment order dated 20.11.2005 passed u/s. 147/144 of the I.T. Act, 1961. He stated that the AO has not given opportunity to the assessee for substantiating its claim before him. He further stated that the AO has also not given opportunity for producing required evidence for assessment and also notices were not served properly to the assessee's address for the assessment, Further he stated that similarly, Ld. CIT(A) has also decided the appeal of the assessee exparte without affording opportunity to the assessee and wrongly upheld the exparte order passed by the AO. Before us, the Ld. Counsel of the assessee has filed a Paper Book containing pages 1 to 114 having the copy of Written submission; Memorandum of Appeal (Form 36); CIT(A) order; acknowledgement of the order; Memorandum of Appeal (Form No. 35); Statement of facts of the case as submitted before the CIT(A); assessment order; Income Tax Computation Form; Demand and hearing notice; Power of Attorney; Fee payment challan; Two gift deed of Virender Singh alongwith its ITR/WTR, Statement of affairs PAN, Ration Card, income and expenditure accounts; two gift deed of Ajit Singh alongwith its ITR/WTR, statement of affairs, PAN, Ration Card, Income and Expenditure accounts; Interest Certificate on FDR; Bank Statement and Cases. He submitted that the aforesaid documents were not considered by the lower authorized while passing their respective orders, which goes to the root of the matter and are very essential to be considered. Therefore, he requested that the issues in dispute may be

set aside to the file of the AO to decide the same afresh, under the law, after giving full opportunity to the assessee.

6. On the contrary, Sh. N.K. Bansal, Sr. DR strongly opposed the request of the Id. Counsel of the assessee and stated that the assessee remained non-cooperative before the AO as well as Ld. CIT(A), hence, the appeal of the Assessee may be dismissed by upholding the action of the Ld. CIT(A).

7. Shri K.K. Agarwal, Ld. Counsel for the assessee undertake on behalf of the assessee to fully cooperate with the AO in the assessment proceedings and to file all necessary evidences without wasting of further time.

8. After hearing both the parties and perusing the relevant records available with us, especially the orders passed by the Revenue Authorities as well as the Paper Book which contains pages 1 to 114 having the copy of Written submission; Memorandum of Appeal (Form 36); CIT(A) order; acknowledgement of the order; Memorandum of Appeal (Form No. 35); Statement of facts of the case as submitted before the CIT(A); assessment order; Income Tax Computation Form; Demand and hearing notice; Power of Attorney; Fee payment challan; Two gift deed of Virender Singh alongwith its ITR/WTR, Statement of affairs PAN, Ration Card, income and expenditure accounts; two gift deed of Ajit Singh alongwith its ITR/WTR, statement of affairs, PAN, Ration Card, Income and Expenditure accounts; Interest Certificate on FDR; Bank Statement

and Cases. We find force in the contention raised by the Ld. Counsel of the assessee that the aforesaid documents were not considered by the lower authorities while passing their respective orders, however, the goes to the root of the matter and are very essential to be considered. We are of the considered view that AO as well as Ld. CIT(A) has decided the issues in dispute against the assessee without affording sufficient opportunity to the assessee and AO has not served the notices properly to the assessee's address i.e. CN No. 340, House no. 89), Village Bamnoli, PO Palam, New Delhi. However, the notice/assessment order was sent at Village Bamnoli, New Delhi – 110 061. As stated by the Ld. Counsel for the assessee that the assessee is having all necessary evidences for substantiating its claim before the AO and also undertake to fully cooperate in the assessment proceedings and to file the necessary evidences for substantiating its claim before the AO without wasting of further time. Keeping in view of the Statement given by the Ld. Counsel for the assessee on behalf of the assessee and on the facts and circumstances of the present case, we are of the considered view that the issues in dispute requires thorough examination at the level of the AO. Therefore, in the interest of justice, we set aside the issues in dispute to the file of the AO to consider the same, afresh under the law, after giving full opportunity of being heard to the assessee. However, the Assessee is directed to file all the relevant documents before the AO for substantiating its claim and fully cooperate with the AO in the proceedings.

9. In the result, the Appeal filed by the Assessee stands allowed for statistical purposes.

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10. Since in quantum proceedings, as aforesaid, the issues in dispute has already been set aside to the file of the AO by this Bench for fresh adjudication, therefore, the penalty in question cannot stand in the eyes of law. Hence, the penalty in dispute stands deleted. Keeping in view of the facts and circumstances of the present case and in the interest of justice, we are of the view that if AO again made any addition in compliance of our aforesaid directions, then the AO is at liberty to levy the penalty, as per law. In the result, the appeal of the Assessee stands allowed in the aforesaid manner.

11. In the result, the ITA No. 3889/Del/2014 is allowed for statistical purposes and ITA No. 3890/Del/2014 is allowed in the aforesaid manner.

Order pronounced in the Open Court on 05/05/2017.

Sd/-

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 05/05/2017

**“SRBHATNAGAR”
Copy forwarded to: -**

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches