

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-3' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-1833/Del/2016
(ASSESSMENT YEAR-2011-12)**

Rakesh Jain, 999, Pan Mandi, Sadar Bazar, New Delhi-110006. PAN-AAGPJ7090P (APPELLANT)	Vs	ITO, Ward-39(3), New Delhi. (RESPONDENT)
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Assessee by	Sh.Sanjay Issar, CA
Revenue by	None
Date of Hearing	27.09.2016
Date of Pronouncement	07.12.2016

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 23.02.2016 of the CIT(A)-20, New Delhi pertaining to 2011-12 on various ground in sustaining the additions made by the AO without affording the assessee an opportunity of being heard.

2. At the time of hearing, an adjournment was moved on behalf of the Revenue. It is worth noting that in almost all appeals fixed for hearing on 27.09.2016, the Revenue has moved an adjournment on the ground that Ld.Sr.DR is on leave. On 26.09.2016 also the position remained the same, accordingly considering the material on record and after hearing the Ld. AR the adjournment request was rejected and the issues were considered on merit.

3. The relevant facts of the case are that the assessee's case was selected for scrutiny by the AO so as to examine the claim of loss from the partnership firm. Accordingly after various opportunities wherein the assessee was required to explain the deposit of cash in Vijaya Bank account and verification of expenses claimed and substantiate by way of evidences the short term capital loss claimed by way of a sale deed and support the deduction claimed u/s 80C. In the absence of supporting evidences and explanation the declared income of Rs.4,71,426/-was assessed at an income of Rs.23,20,382/- by an order

passed by the AO u/s 144 of the Income Tax Act, 1961. The issue was challenged in appeal before the CIT(A) before whom also despite seeking opportunity the assessee failed to appear.

4. In the said background, Ld.AR Sh.Sanjay Issar, CA appearing on behalf of the assessee submitted that an ex-parte order has been passed by the CIT(A) as due to reasons beyond the control of the assessee, he could not participate in the proceedings. The reasons for non-participation were explained to be extreme financial problems which the assessee was undergoing at the relevant points of time. As a result of this, it was submitted that despite seeking opportunities, the assessee could not make effective compliance and virtually remained unrepresented. It was his submission that for the very same reasons even before the AO, the assessee could not participate in the proceedings and the assessment order was passed u/s 144. Elaborating the financial problems it was submitted it can be understood from the fact that the assessee had to sell his property etc and now after overcoming his financial problems, the assessee only seeks an opportunity of being heard. Considering the request of the Ld.AR on behalf of the assessee in the context of the grounds raised and the material available on record, I am of the view that justice demands that the assessee be granted an effective opportunity of being heard. Accordingly, the impugned order is set aside and the issues are restored back to the CIT(A) directing the assessee to ensure full and proper participation before the said authority. The Ld.AR, Sh. Sanjay Issar, CA appearing on behalf of the assessee gave his oral undertaking that the opportunity provided shall not be abused. It was made clear to the Ld.AR that on the failure to utilize the opportunity to place full facts on record, the CIT(A) would be at liberty to pass a speaking order on the basis of material available on record.. Accordingly, in view of the above rejecting the departmental request for time, the impugned order is set aside and the issues are restored back to the CIT(A) with a direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard.

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

The order is pronounced in the open court on 07th of December, 2016.

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI