

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

Before Sh. N. K. Saini, Accountant Member

ITA No. 5496/Del/2016 : Asstt. Year : 2012-13

Lalit Goel, E-132, C-11, 1 st Floor, Backside, Preet Vihar, New Delhi-110092	Vs	Income Tax Officer, Ward-46(1), New Delhi-110092
(APPELLANT)		(RESPONDENT)
PAN No. AFNPG5995C		

Assessee by : Sh. V. K. Tulsian, CA

Revenue by : Sh. Amrit Lal, Sr. DR

Date of Hearing : 15.05.2017	Date of Pronouncement : 14.06.2017
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ORDER

This is an appeal by the assessee against the order dated 12.08.2016 of Id. CIT(A)-16, New Delhi.

2. Following grounds have been raised in this appeal:

“1. Whether the Ld. CIT(A) was justified by up holding the order of Ld. A.O. on the premises that no written submission or evidence filed and therefore, confirm the Part Additions even without properly considering the GOA.

2. Whether the Ld. CIT(A) was justified by holding that there is no illegality by making additions on account of sales tax demand in the absence of any submissions.

3. Whether the Ld. CIT(A) was justified by holding that on account of revenue in nature expenses like car exp., interest of car loan and telephone expenses

10% disallowances on the premises that it cannot be overruled that these expenses partially may be used for personal in nature.

4. Whether the Ld. CIT(A) was justified by holding that the disallowances of Rs.20000/- on account of interest to loans to others.

5. Whether the Ld. CIT(A) was justified by holding that TDS of Rs.20178/- received by the Assessee claimed but no reference of corresponding figure of receipt of Rs.2,01,780/- appear in the P/L Account even without apprising the record because the same have been duly recorded in the individual capacity.

That the appellant craves leaves to amend, alter or to raise any other ground at the time of the hearing.”

3. Facts of the case in brief are that the assessee e-filed the return of income on 18.09.2010 declaring total income of Rs.9,53,261/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Thereafter, the case was selected for scrutiny. The AO framed the assessment at an income of Rs.13,15,378/- by making the various additions. The AO added the sale tax debited to profit & loss account amounting to Rs.79,687/-, disallowed Rs.2,01,780/- on account of commission or brokerage since the amount was not declared but TDS of Rs.20,178/- was claimed. The AO also disallowed 10% of the various expenses and made the addition of Rs.60,650/-.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who decided the appeal *ex-parte*. The Id. CIT(A) noted in page no. 2 of the impugned order as under:

“(i) Notice issued u/s 250 dated 01/04/2016 and case was fixed for 13/04/2016. The assessee filed adjournment petition and case was adjourned to 09/05/2016.

(ii) On 09/05/2016 case was adjourned to 26/05/2016 on AR's request.

(iii) On 26/05/2016 case was adjourned to 04/07/2016 on AR's request.

(iv) On 04/07/2016 case was adjourned to 09/08/2016. No one attended on 09/08/2016 or till the passing of this order.

From the opportunities given to the assessee and his non compliant attitude, I am left no other option but to decide, the appeal on merit as per material available on record.”

5. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that no notice of hearing on 09.08.2016 was received by the assessee and the Id. CIT(A) was not justified for deciding the appeal *ex-parte* without giving proper opportunity of being heard to the assessee.

6. In his rival submissions the Id. Counsel for the assessee strongly supported the impugned order passed by the Id. CIT(A) and submitted that the assessee was non-cooperative and did not appear before the Id. CIT(A), so there was no alternative except to decide the appeal of the assessee *ex-parte*.

7. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that the Id. CIT(A) nowhere stated that the notice of hearing on 09.08.2016 was served upon the assessee, he simply stated the case was adjourned on various dates but had not given the reasons for giving adjournments. It is also not stated that the last date of hearing on 09.08.2016 was intimated to the assessee. It is well settled that nobody should be condemned unheard as per the *maxim* “*audi alteram partem*”. I, therefore, by keeping in view the principles of natural justice, deem it appropriate to set aside the impugned order back to the file of the Id. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 14/06/2017)

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

Dated: 14/06/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR