

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

Before Sh. N. K. Saini, AM and Sh. K. N. Chary, JM

ITA No. 3182/Del/2015 : Asstt. Year : 2010-11

Kamakhya Impex Pvt. Ltd., J-4/40, Flat No. B-20, Khirki Extension, Malviya Nagar, New Delhi-110085	Vs	DCIT, Circle-5(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AACCK5274F		

**Assessee by : Sh. Ved Jain, CA
Revenue by : Sh. Anshu Prakash, Sr. DR**

Date of Hearing : 03.07.2017	Date of Pronouncement : 03.07.2017
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 11.03.2015 of Id. CIT(A)-V, New Delhi.

2. Following grounds have been raised in this appeal:

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in passing the order without giving assessee an opportunity of being heard in violation of principle of natural justice.

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in passing the ex-parte order without discussing the issues on merits.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of AO in making addition of an amount of Rs.69,76,327/- on account of loss on sale of fixed assets.*

5(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of AO in disallowing an amount of Rs.18,78,705/- on account of loss on derivatives treating the same as 'speculation loss'.*

(ii) *That the abovesaid action of the learned CIT(A) is in clear contravention of the provisions of Section 43(5) of the Act.*

6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.3,04,24,673/- made by AO on account of short term capital gain.*

7. *That the appellant craves leave to add, amend or alter any of the grounds of appeal."*

3. Vide Ground Nos. 1 to 3, the grievance of the assessee relates to the *ex-parte* order passed by the ld. CIT(A) without providing opportunity of being heard, in violation of principle of natural justice.

4. Facts of the case in brief are that the assessee was engaged in the business of trading in shares, derivatives & commodities. The return of income was e-filed on 15.01.2011 declaring loss of Rs.90,31,631/-, which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Later on, the case was selected for scrutiny. The AO framed the assessment at an income of Rs.3,02,47,074/- by making the various additions and disallowances.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) who dismissed the appeal *ex-parte* and sustained the additions made by the AO by observing that neither the assessee nor his Authorized Representative appeared before him.

6. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that no notice of hearing was served upon the assessee by the Id. CIT(A). Therefore, the dismissal of the appeal without providing opportunity of being heard in *limine* was not justified. It was further submitted that the Id. CIT(A) had not decided the appeal on merit and simply confirmed the order passed by the AO.

7. In his rival submissions the Id. DR strongly supported the order of the AO and further submitted that the assessee did not comply with the various notices issued by the Id. CIT(A), so there was no alternative except to decide the appeal *ex-parte*.

8. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is noticed that the Id. CIT(A) mentioned in the impugned order that several notices were issued for the hearing to the assessee but none appeared. He nowhere stated that any of the notice issued was served upon the assessee. Moreover, the Id. CIT(A) simply confirmed the order of the AO. He did not decide the issues on merit. We, therefore, considering the totality of the facts as discussed hereinabove are of the view that the impugned order deserves to be set aside, particularly when no effective opportunity of being heard was provided to the assessee. It is well settled that nobody should be condemned unheard as per the *maxim "audi alteram partem"* and in the present case as we have already pointed out that no effective hearing was provide to the assessee by the Id. CIT(A), therefore, the impugned order is set aside and the matter is restored 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. We also direct the assessee to cooperate and not to seek undue or unwarranted adjournments.

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

(Order Pronounced in the Court on 03/07/2017)

Sd/-
(K. N. Chary)
JUDICIAL MEMBER

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

Dated: 03/07/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR