

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "FRIDAY-SMC", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

	I.T.A. Nos. 4777 TO 4781/DEL/2014)	
	AYRS: 2005-06 TO 2009-10	
AJAY SOOD B-19, DDA FLATS, MATA SUNDRI ROAD, NEW DELHI (PAN: BCCPS8787H)	VS.	DCIT, CENTRAL CIRCLE-23, NEW DELHI
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Punjeet Chugh, CA
Department by : Sh. Arun Kumar Yadav, Sr. DR

ORDER

These appeals are filed by assessee against the Order all dated 30.06.2014 passed by the Ld. CIT(A)-XII, New Delhi relating to Assessment Years 2005-06 to 2009-10 on the following common grounds, except the difference in figures:-

- 1. The order of the Ld. CIT(A) is bad in law and on the fact of the case.*
- 2. The Ld. AO has wrongly treated bank pass book as assessee's book of accounts. It is a copy of the ledger account of bank. The application of section 68 of the Income Tax Act, 1961 is unjust and arbitrary.*
- 3. That no reasonable opportunity was given to the assessee to represent his case for*

making submission or filing evidence or additional evidence. This was against the natural law of justice. Further no detailed or speaking order was passed by the Ld. CIT(A).

4. The addition of Rs. 2,79,692/- for the alleged bank deposit were unjust and uncalled for. The addition was made on a assumption basis without confronting the material used against assessee.

5. The Ld. AO erred in charging interest u/s. 234A, 234B or 234D of the Income Tax Act, 1961.

6. The Assessee craves leave to add amend or withdraw any grounds of appeal at the time or before the hearing of appeal.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

3. At the time of hearing, Ld. Counsel of the Assessee has stated that exactly on similar facts and circumstances of the case, the ITAT, SMC-I Bench, New Delhi has already set aside the issues in dispute to the file of the Ld. CIT(A) to decide the same afresh, after passing the speaking order, in the case of Arun Nayyar vs. DCIT passed in ITA Nos. 4965 to 4970/Del/2014 (Ays. 2004-05 to 2009-10) vide order dated 30.10.2015. Hence, he requested that the issues in dispute may

also be set aside to the file of the Ld. CIT(A), in view of the decision of the ITAT, SMC-I Bench, New Delhi passed vide order dated 30.10.2015 in the case of Arun Nayyar vs. DCIT in ITA No. 4965 to 4970/Del/2014 (Ayrs. 2004-05 to 2009-10). In this behalf, he attached the copy of the order dated 30.10.2015 for ready reference.

4. Ld. DR did not raise any objection to the proposition made by the Ld. Counsel of the assessee.

5. I have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A) and the Tribunal's order dated 30.10.2015, as aforesaid. For the sake of convenience, I am reproducing the relevant finding of the Tribunal's order dated 30.10.2015 as under:-

“...4. Accordingly, considering the material available on record in view of the above and the submissions of the parties before the Bench, the delay of one day is condoned in each of these appeals. The record shows that in each of these appeals the issue for consideration and the facts for consideration have not been brought out in the orders by the First Appellate Authority. It is seen that after referring to the fact that four specific opportunities were provided, the issue has been deiced by the Ld. CIT(A) in the following manner:-

“1.3 Further, in view of the provisions of section 251(1)©, the Commissioner of Income Tax Appeals has the power to dispose of an appeal “in any other case, he

may pass such orders in the appeal as he thinks fit". In the instant case there is enough ground of non appearance of the appellant to decide the matter ex parte, the appeal is decided on the basis of material available on record. Hence, the action of the AO is upheld and the appeal is dismissed."

4.1 The decision cannot be upheld as it is based on an incorrect appreciation of the relevant provisions of the statute. Section 250 of the Income Tax Act, 1961 sets out the procedure which the CIT(A) is required to follow in appeal. For the purpose of the present proceedings, it is appropriate to set out Section 250(6) of the Act:-

250. "(1).....

(2).....

(3).....

(4).....

(5).....

(6) the order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

(6A).....

4.1 A perusal of the orders under challenge shows that while deciding the appeals, the Ld. CIT(A) has not followed these mandatory provisions. While deciding the issues the CIT(A) is first supposed to set out the points for determination and thereafter the reasons for the conclusions drawn have to be brought on record.

In the absence of this requisite exercise the order cannot be upheld. In view of the above the impugned orders in each of these appeals are set aside and restored back to the CIT(A) with the directions to pass a speaking order in accordance with law. Needless to say that a reasonable opportunity of being heard shall be provided to the assessee. The said order was pronounced on the date of hearing itself in the presence of the parties.

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

5.1 After perusing of the aforesaid finding of the Tribunal, SMC-I Bench, New Delhi vide order dated 30.10.2015 in the case of Arun Nayyar vs. DCIT passed in ITA No. 4965 to 4970/Del/2014 (Aysr. 2004-05 to 2009-10), I am of the considered view that facts and circumstances of the present case are similar and identical to the aforesaid cited case. I note that in the present case also the Ld. CIT(A) has passed the similar type of non-speaking order, which is not sustainable in the eyes of law. Therefore, respectfully following the decision dated 30.10.2015 of the ITAT, SMC-I Bench, New Delhi in the case of Arun Nayyar vs. DCIT passed in ITA No. 4965 to 4970/Del/2014 (Aysr. 2004-05 to 2009-10) (Supra), the issues involved in the present Appeals are set aside to the file of the CIT(A) with the directions to pass a speaking order in accordance with law. Needless to say that a

reasonable opportunity of being heard shall be provided to the assessee.

6. In the result, all the Appeals filed by the assessee stand allowed for statistical purposes.

Order pronounced on 10.11.2017.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

“SR BHATNAGAR”

Date: 10.11.2017

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches

