

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

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

ITA No. 2088/Del/2016 : Asstt. Year : 2011-12

Dish TV India Ltd., FC-19, Film City, Sector-16A, Noida-201301 (U.P.)	Vs	Addl. Commissioner of Income Tax(TDS), Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. AAACA5478M		

Assessee by : Sh. Sanjiv Sapra, FCA

Revenue by : Sh. Arun Kumar Yadav, Sr. DR

Date of Hearing : 19.12.2017	Date of Pronouncement : 21.12.2017
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 29.02.2016 of ld. CIT(A)-I, Noida.

2. Following grounds have been raised in this appeal:

“1. That the Ld. CIT(A) ought not to have decided the appeal in an ex-parte manner vide his appellate order dated 29/02/2016 thereby ignoring Assessee's application for adjournment of the appeal filed on 23/02/2016 and therefore, the impugned order is arbitrary, unjust and illegal.

2. That even on the previous dates of hearings viz. 28/05/2015, 08/01/2016 and 01/02/2016, the Appellant had sought adjournment which was duly granted. Consequently, the observations made by

the Id. CIT(A) in para 2 of his appellate order are also factually incorrect.

3. The impugned order passed by the Id. CIT(A) is also arbitrary, unjust and untenable because the Id. CIT(A) had not at all discussed the statement of facts and the grounds of appeal as filed before him against the imposition of penalty u/s 271C of I.T. Act.

4. That the penalty of Rs. 15,78,108/- as levied u/s 271C of I.T. Act being arbitrary, unjust and illegal on various factual and legal grounds, the same deserve to be deleted.

5. That the Ld. CIT(A) has erred in facts by holding that the dispute is already covered in the earlier appeals and has ignored that the facts of present appeal are different from earlier appeals.

6. That the Appellant reserves its right to add, amend/modify the grounds”

3. From the above grounds, it is gathered that the main grievance of the assessee relates to the *ex-parte* order passed by the Id. CIT(A) without providing due and proper opportunity of being heard to the assessee.

4. Facts of the case in brief are that the AO levied the penalty of Rs.15,78,108/- u/s 271C of the Income Tax Act, 1961 holding that the assessee has failed to deposit the tax to the credit of Central Government and has also failed to

deduct tax at source correctly causing short deduction of tax on the eligible amount.

5. Being aggrieved the assessee carried the matter to the ld. CIT(A) who decided the issue in favour of the department by passing the *ex-parte* order.

6. Now the assessee is in appeal. The ld. Counsel for the assessee submitted that no notice for hearing was communicated to the assessee, therefore, the ld. CIT(A) was not justified in deciding the appeal *ex-parte* without providing due and reasonable opportunity of being heard to the assessee.

7. In his rival submissions, the ld. DR strongly supported the orders of the authorities below.

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 ld. CIT(A) in para 2 of the impugned order noted that the case was fixed for hearing on 28.05.2015, 08.01.2016 and 01.02.2016 but nowhere he stated that the notice for hearing was served upon the assessee. It is well settled that nobody should be condemned unheard as per the *maxim "audi alteram partem"*. We,

therefore, by keeping in view the principles of natural justice, deem it appropriate to set aside the impugned order and remand the issue 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.

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

(Order Pronounced in the Court on 21/12/2017)

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

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

Dated: 21/12/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR