

**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. 5280/Del./2016 : Asstt. Year : 2012-13

Gulshan Polyols Ltd., G-81, Preet Vihar, New Delhi PAN: AABCG3954F	Vs	Addl. CIT Range-12 New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAATZ0343F		

**Appellant by : Sh. Navin Kumar, CA
Respondent by : Sh. Arun Kumar Yadav, Sr. DR**

Date of Hearing : 20.12.2017	Date of Pronouncement :26 .12.2017
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ORDER

PER N.K. SAINI, A.M.

This is an appeal filed by the assessee against the order dated 09.08.2016 of the CIT(A)-4, New Delhi. Following grounds have been raised in this appeal :-

“1. That the Hon’ble Addl. Commissioner of Income Tax is wrong and unjustified both in law and facts in disallowing of Repair and Maintenance Expenses of Rs. 9,67,751/-.

2. That the Hon’ble Addl. Commissioner of Income Tax is wrong and unjustified both in law and facts in disallowing Rs. 42,165/- u/s 14A.

3. That the Hon'ble Addl. Commissioner of Income Tax is wrong and unjustified both in law and facts in disallowing of part deduction u/s 80IC in respect of other Income of Rs. 4,31,756/-."

2. Facts of the case, in brief, are that the assessee filed the return of income on 27.09.2012 declaring total income at Rs. 12,83,56,760/-. Later on the case was selected for scrutiny. The AO made the addition of Rs. 7,46,213/- by making the disallowance out of the repairs and maintenance and added Rs. 42165/- by making the disallowance u/s 14A of the Income Tax Act, 1961 (hereinafter referred to as the Act). The AO also made certain other disallowances and framed the assessment at an Income of Rs. 13,08,35,522/- under normal provisions of the Act and at an income of Rs. 21,37,14,140/- under the provisions of section 115JB of the Act.

3. Being aggrieved, the assessee carried the matter to the Id. CIT(A) who dismissed the appeal by observing in para 2 of the impugned order as under :

"2. The case was fixed for hearing on 13.08.2015 but none appeared on that date or after that. Again the case was fixed for hearing on 29.12.2015 and once again no one attended nor filed any adjournment application. It seems that the appellant is not interested in pursuing the matter, therefore the appeal is dismissed."

Now, the assessee is in appeal.

4. The Id. Counsel for the assessee at the very outset stated that the Id. CIT(A) without giving proper opportunity of being heard to the assessee and discussing the issues agitated by the assessee on merit, dismissed the appeal of the assessee. In his rival submissions, the Id. DR supported the impugned order passed by the Id. CIT(A).

5. We 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) has not discussed the issues on merit and dismissed the appeal in limine. He simply stated that case was fixed for hearing on 29.12.2015 and dismissed the appeal by passing the impugned order on 09.08.2016. But

nowhere he mentioned that notice for hearing on the said date was served upon the assessee. It is well settled that nobody should be condemned unheard as per the maxim, "Audi Alteram Partem". We, therefore, keeping in view the principles of natural justice, deem it appropriate to set aside this case back to the file of the Ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

6. In the result, appeal filed by the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 26/12/2017).

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

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

Dated: 26 / 12/2017

B.Rukhaiyar

Copy forwarded to:

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

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Draft dictated on	20.12.2017		
2.	Draft placed before author	21.12.2017		
3.	Draft proposed & placed before the second member			
4.	Draft discussed/approved by Second Member.			
5.	Approved Draft comes to the Sr.PS/PS			
6.	Kept for pronouncement on	26.12.2017		
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			