

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

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

**I.T.A. Nos. 6681/Del/2017
Assessment Year: 2007-08**

DAYA RAM SAIN,
R. H-33, SEC-2, HIG DUPLEX,
RAJENDER NAGAR,
GHAZIABAD
(PAN: AUSPS7547Q)
(ASSESSEE)

VS. ITO, WARD 1(2)
GHAZIABAD

(RESPONDENT)

Assessee by: Sh. Raj Kumar Agarwal, CA
Revenue by: Ms. Ashima Neb, Sr. DR

ORDER

This appeal is filed by assessee against the Order dated 31.3.2017 passed by the Ld. CIT(A), Ghaziabad relating to Assessment Year 2007-08 on the following grounds:-

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in making addition of Rs. 22,00,000/- on account of that the assessee has incurred expenditure of Rs. 22,00,000/- by way of cash payment of donation / capitation fee to Santosh Medical College for MBBS course of his daughter K. Monica Sain as AO did not confronted any reason / details / information regarding the same.

2. That in any case and any view of the matter, action of the CIT(A) in not reversing the action of the AO in making the impugned addition / disallowance and framing the impugned assessment order which is contrary to law and facts, void ab initio, beyond jurisdiction, and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.
3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of AO in charging interest u/s 234A, 234B, 234C of the Income Tax Act, 1961.
4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

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. However, there is delay of 140 days in filing the appeal and in this behalf the assessee has filed the application alongwith affidavit for condoning the delay in dispute. After perusing the said application for condonation of delay alongwith affidavit, I am of the view that due to

reasonable cause the delay was occurred, hence, the delay in dispute is condoned.

3. At the time of hearing, Ld. Counsel of the assessee reiterated the contentions raised in the grounds of appeal and requested to set aside the matter to the file of the Ld. CIT(A) to decide the same afresh, because no proper opportunity was given to the assessee and the appeal of the Assessee was dismissed on account of non-prosecution and without deciding on merit.

4. Ld. DR has stated that assessee remained non-cooperative before the AO as well as before the Ld. CIT(A) and is not entitled for any lenient view from this Bench. Hence, he requested that the Appeal filed by the Assessee may be dismissed.

5. After hearing both the parties and perusing the impugned order, I am of the view that there is no doubt assessee remained non-cooperative before the Ld. CIT(A) and the Ld. CIT(A) has mentioned the same in his order dated 31.3.2017 vide para no. 5 to 6 at page no. 5 to 6, which is reproduced hereunder:-

"4. This appeal was fixed for haring on number of times, the details of which are given below, but no compliance was made to any of the notices issued. All these notices were sent to the appellant through Speed Post on the address given in the appeal petition i.e. Form No. 35.

S.No.	Date of notice	Date fixed	Remark
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		for hearing	
1	13.02.2017	23.2.2017	An application filed for adjournment on account that necessary documents are being collected adjourned to 28.2.2017.
2	-	28.2.2017	None Attended
3	14.3.2017	21.3.2017	None Attended

5. From the above it is clear that despite several opportunities none appeared on behalf of the appellant for hearing only adjournment's applications were filed. Hence the appeal filed by the appellant is liable to be dismissed for non-prosecution. In my above view, I find support from the following decisions:-

(i) In the case of CIT Vs. B.N. Bhattachargee & Another 118 ITR 461 (relevant pages 477 & 478) wherein their Lordships have held that "the appeal does not mean merely filing of appeal but effectively pursuing it."

(ii) In the case of Estate of Late Tukoji Rao Holker Vs. CWT 223 IR 480 (MP) while dismissing the reference made at the instance of assessee in default made following observations in their order. "if the party at whose instance the reference is made fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the

reference, this court is not bound to answer the reference.

(iii) In the case of CIT Vs. Multplan India Pvt. Ltd. 38 ITD 320 (Del). The appeal filed by the revenue before the Tribunal which was fixed for hearing but on the date of hearing nobody represented neither the revenue applicant, nor any communication for adjournment was received. There was no communication or information as to why 'revenue choose to remain absent on that date. The Hon'ble Tribunal laid down the' principle that on the basis of inherent power the appeal filed by the appellant can be treated as un-admitted.

6. Therefore, keeping in view of the above, the appeal filed by the appellant is liable to be dismissed for non-prosecution. On merits, perusal of facts reveal that notice u/s. 148 was issued to the appellant on receipt of information that appellant had made a payment of Rs. 22,00,000/- towards donation / capitation fee to Santosh Medical College for admission of her daughter in MBBS course. As no evidence challenging the information has been furnished either during assessment proceedings or during appellate proceedings, it is concluded that appellant has nothing

substantial to state. In the light of these facts action of AO making the above said addition is confirmed."

6. After going through the above finding of the Ld. CIT(A), I am of the view that there is no doubt that assessee remained non-cooperative before the Revenue Authorities, but I am of the opinion that Ld. CIT(A) has confirmed the assessment order in a routine manner, without discussing in detail the facts and circumstance of the case and also did not deal the issue on merit and passed a non-speaking order, which in my opinion, is not in accordance with the principles of natural justice and it is an erroneous approach. It is a settled law that even an administrative order has to be speaking one.

6.1 In this regard I draw support from Hon'ble Apex Court in the case M/s Sahara India (Farms) Vs. CIT & Anr. in [2008] 300 ITR 403 has held that even "an administrative order has to be consistent with the rules of natural justice".

6.2 I further draw support from the Apex Court decision in the case of Kapurchand Shrimal Vs. CIT, 131 ITR 451 wherein it was held that the appellate authority has jurisdiction as well as the duty to correct the errors in the proceedings under appeal and to issue of necessary, appropriate directions to the authority against whose decision appeal is preferred to dispose of the whole or any part of the mater afresh, unless forbidden from doing so by statute.

7. In the background of the aforesaid discussions and precedents, I remit back the issues to the files of the Ld. Commissioner of Income Tax (Appeals) to consider each and every aspects of the issues involved in the Appeal and decide the same afresh, after passing a speaking order, after considering all the evidences/documents. Needless to add that the assessee should be given adequate opportunity of being heard.

8. In the result, the appeal filed by the assessee stand allowed for statistical purposes.

Order pronounced on 01/06/2018.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Date 01/06/2018

“SRBHATNAGAR”

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches