

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

Before Sh. N. K. Saini, Accountant Member

ITA No. 246/Del/2018 : Asstt. Year : 2013-14

M/s M.Q. Steel Pvt. Ltd., Flat No. 16/1, Jaswant Apartment, Jamia Nagar, Tikona Park, Okhla Gaon, New Delhi0110025	Vs	Income Tax Officer, Ward-16(1), Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABCM9994P		

**Assessee by : Sh. Ankit Gupta, Adv.
Revenue by : Sh. B. R. Mishra, Sr. DR**

Date of Hearing : 05.06.2018	Date of Pronouncement : 11.06.2018
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ORDER

This is an appeal by the assessee against the order dated 27.10.2017 of
1d. CIT(A)-22, New Delhi.

2. Following grounds have been raised in this appeal:

"1. That, the assessment made U/s 143 (3) and the additions/disallowance made by the Assessing Officer are illegal, bad in law & without jurisdiction.

2. That, the CIT(A) has erred in dismissing the appeal ex-parte without appreciating that no notice of hearing has been received by the assessee company.

*3. That, the Assessing Officer as well Learned CIT (A) has erred in completing the assessment on an Income at **Rs.22,35,150.00** against the Return of Income declaring at **Rs.11,97,210.00**. The additions/disallowances made at **Rs.10,37,936.00** are illegal, unjust, highly excessive and are not based on any material on record by the Assessing Officer.*

4. That, in view of the facts and circumstances, the CIT(A) has erred in law and on facts in making the

*addition/disallowance U/s 40(a)(ai) of **Rs.1,72,169.00** on account of Clearing & Forwarding charges and Other Expenses on the ground that assessee in default in not deducting the TDS U/s 194C, whereas there is no liability of the assessee company to deduct the TDS on the said payment as per the provision of section 194C of the Income Tax Act, 1961.*

*5. That, the Assessing Officer and as well as CIT (A) has erred, in view of the facts and circumstances, in law and on facts in making the addition/ disallowance U/s 40(a)(ai) of the Act of **Rs.11,798.00** on account of Ground Rent and Detention Charges paid for the import of the raw material.*

*6; That, the Assessing Officer and CIT (A) has erred, in view of the facts and circumstances, in law and on facts in making the addition/ disallowance U/s 40(a)(ai) of the Act of **Rs.8,53,969.00** to the Income of the assessee on account disallowance of Shipping/IHC Charges paid to the foreign shipping company.*

7. That, The CIT(A) erred in making the enhancement to the income of the assessee appellant without giving proper opportunity, which is illegal, bad in law and against the Principle of Natural Justice.

8. The CIT(A)/Assessing Officer has erred in not providing proper and adequate opportunity of hearing to the Appellant to place the evidence/details on record to substantiate its claim during the assessment proceedings.

9. The additions made and the observations made are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record and also excessive. The CIT (A) erred in upholding the same.

10. The CIT (A) has failed to appreciate, the explanation given in the evidence produced, material placed that has been made available on record has not been properly. considered and judicially interpreted and the same do not justify the additions/ allowances made.

11. The interest under Section 234B, 234C & 234D has been wrongly and illegally charged as the Appellant could not have foreseen the additions/ disallowances made and could not have included the same in current income for payment of Advance tax. The interest charged under various sections is also wrongly worked out.

12. The Appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.”

3. The main grievance of the assessee vide Ground Nos. 2, 7 and 8 relates to the opportunity of being heard not provided by the Id. CIT(A).

4. Facts of the case in brief are that the assessee filed the return of income on 30.09.2013 declaring an income of Rs.11,97,210/-. However, the assessment was framed by the AO at an income of Rs.22,35,146/- by making the various additions.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) who dismissed the appeal of the assessee *ex-parte* in *limine*.

6. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that no notice for hearing was served upon the assessee. Therefore, the Id. CIT(A) was not justified in dismissing the appeal *ex-parte* without providing an opportunity of being heard to the assessee. It was also stated that the Id. CIT(A) has not discussed and disposed off the issues raised by the assessee on merit.

7. In his rival submissions, the Id. Sr. DR submitted that adequate opportunities of being heard were provided by the Id.

CIT(A), therefore, the appeal of the assessee was rightly dismissed as the assessee did not comply with the notices.

8. I 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) decided the appeal *ex-parte* and had not discussed the issues raised by the assessee on merit. He simply stated that the notices for hearing were sent to the assessee but nowhere, it was mentioned that any of such notices was served upon the assessee. It is well settled that nobody should be condemned unheard as per the *maxim "audi alteram partem"*. I, therefore, by keeping in view the principles of natural justice, deem it appropriate to set aside this 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, appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Open Court on 11/06/2018)

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

Dated: 11/06/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR