

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

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER

**ITA No.-711/Del/2015
(Assessment Year: 2010-11)**

Jyoti Enterprises 503, Royal Retreat 1, Charmwood Village, Surajkund Faridabad. AACFJ2611C	vs	ITO Ward 1(3) Faridabad
Assessee by	Sh. Shyam Sunder Mangla, CA	
Revenue by	Ms. Ashima Neb, Sr. DR	

Date of Hearing	25.04.2018
Date of Pronouncement	24.05.2018

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dt. 27.11.2014 of CIT(A)-Faridabad pertaining to 2010--11 AY. Although various grounds have been raised by the assessee on merits, however, the parties were heard only on ground no. 1 which reads as under:

1. *“That Ld. CIT(A) has not provided the opportunity as requested by the appellant, the matter should be remanded to the first appellate authority.”*
2. The Ld. AR inviting attention to para 3 of the impugned order submitted that the assessee appeared before the CIT(A) on 27.10.2014 and 12.11.2014 and on both these occasions time had been sought. It was submitted that on 12.11.2014 the Counsel could not appear as due to theft at the residence of his office employee an adjournment had been moved. On account of this reason itself the counsel remaining busy in lodging of FIR etc. and hence could not appear on 25.11.2014 also as his functioning remained disturbed. Accordingly, it was his limited prayer that the issue may be set aside to the file of the CIT(A) in order to afford an opportunity of being heard.
3. The Ld. Sr. DR submitted that even before the AO despite the fact that more than sufficient time and opportunity had been provided, the assessee did not support its claim. The Ld. AR clarified that the issue in the present proceedings is limited to lack of opportunity before the CIT(A) and he is not assailing the assessment order as the Forum has

been provided where he has not been heard. The ld. Sr. DR considering the request did not oppose the prayer for remand.

4. I have heard the submissions and perused the material available on record. It is seen that the assessee's returned income of Rs. 13,74,000/- odd was selected for scrutiny, wherein the assessment was concluded at an income of Rs. 29,43,820/-. The additions made by the AO were challenged in appeal before the CIT(Appeals) where initially time was sought subsequently on 25.11.2014 neither anyone appeared nor any request for time was made. In the light of the submissions advanced by the counsel, we find that the assessee remained unrepresented for the reasons beyond the control of the counsel. Accordingly, accepting the submissions to be correct and true and also accepting the oral undertaking giving by the Ld. AR the impugned order is set aside back to the file of the CIT(A) with the direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. It is made clear that the opportunity so provided should not be abused and the assessee should participate fully and fairly in the proceedings before the CIT(A) as failing which the CIT(A) would be at liberty to pass an order on the basis of material available on record. Said order was pronounced in the open court at the time of hearing itself.

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

Order pronounced in the open court on 24th May,2018

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

*Kavita Arora/Poonam(CHD)

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI