

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 1083/Del/2015
Assessment Year: 2008-09

SHYAM SUNDER MAHESHWARI,
4664-65, MAHABIR BAZAR,
CLOTH MARKET,
DELHI - 11 0006
(PAN: AAAHS5580D)

VS. ITO, WARD-50(4),
NEW DELHI

(APPELLANT)

(RESPONDENT)

Assessee by : Sh. V. Rajkumar, Adv.
Revenue by : Sh. K. Tewari, Sr. DR

ORDER

PER H.S. SIDHU, JM

This appeal has been filed by the Assessee against the Order dated 27.01.2015 of the Ld. Commissioner of Income Tax (Appeals)-41, New Delhi relevant to assessment year 2008-09 (FY 2007-08 4th Quarter).

2. The grounds raised in the appeal read as under:-

On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in :

- i) Passing order u/s. 201(1)/201(1A) of the Income Tax Act, 1961 without providing due

- and adequate opportunity and without allowing credit for TDS deposited in the Bank.
- ii) Precipitately passing an order u/s. 250 of the Act without providing due and adequate opportunity and failing to consider the written submission as filed in his office.

Both the above actions being arbitrary, erroneous and illegal, it is prayed that the same must be quashed with the directions for appropriate relief.

3. 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.

4. During the hearing, Ld. Counsel of the Assessee has filed a small Paper Book containing pages 1 to 10 having the copy of the notice received from CIT(A)-XXX fixed the date 16.9.2013; copy of submissions filed before CIT(A) dated 16.9.2013 alongwith letter filed before AO dated 9.1.2013 for rectification and copy of challan; copy of notice received from CIT(A)-XXX fixed the date 21.11.2014; copy of submissions filed before CIT(A) dated 21.11.2014; copy of CIT(A) order for AY 2007-08; copy of bank statement. He stated that Assessing Officer has passed the order u/s. 201(1)/201(1A) of the Income Tax Act, 1961 without providing due and adequate opportunity and without allowing credit for TDS deposited in the Bank and also the Ld. CIT(A) passed an order u/s. 250 of the Act without providing due and adequate opportunity and failing to

consider the written submission and dismissed the appeal of the assessee on account of non-appearance. He draw our attention towards the Pg. 3 of the PB which is a letter dated 9.1.2013 addressed to AO by the assessee stating therein that a demand of Rs. 1,31,850/- was created and the demand consists of tax Rs. 84,050/- and interest Rs. 47,800/-. The tax amounting to Rs. 84,053/- was deposited on 30.5.2008 and requested that order u/s. 154 of the Act may kindly be passed and the demand created be adjusted. He further draw our attention towards page no. 2 of the PB which is a letter dated 12.9.2013 addressed to Ld. CIT(A), New Delhi by the Assessee reiterating the same facts made before the AO vide aforesaid letter dated 9.1.2013 and requested the Ld. CIT(A) to direct the AO for giving reasonable opportunity and giving credit for the taxes deposited which are all in order. He further draw our attention towards page no. 6 of PB which is a letter dated 20.11.2014 addressed to the Ld. CIT(A) by the assessee stating therein that the entire demand has been deposited and the photocopy of the challans had been filed alongwith letter dated 21.1.2013 for enabling the AO to give due credit for the taxes deposited. In view of the above, he requested the Bench to set aside the issue in dispute to the file of the AO with the directions to him to give reasonable opportunity to the assessee to explain and satisfy the AO for substantiating his claim.

5. On the other hand, Ld. DR relied upon the orders of the authorities below and stated that assessee remain non-cooperative before the Ld. CIT(A), hence, the Ld. CIT(A) has rightly dismissed the appeal of the assessee, which does not need any interference on our part.

6. We have heard both the parties and perused the records. We find considerable cogency in the contention of the Ld. Counsel of the assessee Assessing Officer has passed the order u/s. 201(1)/201(1A) of the Income Tax Act, 1961 without providing due and adequate opportunity and without allowing credit for TDS deposited in the Bank and also the Ld. CIT(A) passed an order u/s. 250 of the Act without providing due and adequate opportunity and failing to consider the written submission and dismissed the appeal of the assessee on account of non-appearance, which is not sustainable in the eyes of law. After perusing the photocopy of the challan, we note that a demand of Rs. 1,31,850/- was created and the demand consists of tax Rs. 84,050/- and interest Rs. 47,800/- and the tax amounting to Rs. 84,053/- was deposited on 30.5.2008 vide Taxpayer Counterfoil Receipt dated 30.5.2018 deposited in the Canara Bank, Ballimaram Branch, Chandni Chowk, Delhi. But the AO did not give any opportunity to the assessee to explain and satisfy him for substantiating the claim and enabling the AO give due credit for the taxes deposited, in accordance with law.

6.1 Keeping in view of the facts and circumstances of the case, we find that assessee remain non-cooperative before the Ld. CIT(A), but in the interest of justice, we are of the considered view that the issue in dispute needs to be set aside to the AO with the directions to give adequate opportunity of being heard to the assessee and give due credit for the taxes deposited, in accordance with law. We hold and direct accordingly. However, the assessee is directed through his Counsel to appear before the Assessing Officer on **31.07.2018 at 10.00 AM** to substantiate his claim before the AO and produce all the necessary documents/ evidences, if any and did not take any unnecessary adjournment.

7. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced on 28-06-2018.

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

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dated : 28-06-2018

SR BHATANGAR

Copy forwarded to:

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

AR, ITAT
NEW DELHI.