

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

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA Nos. 2247 to 2253/Del/2009
(Assessment Years: 2000-01 to 2006-07)**

ACIT, vs Sh. Chatan Das Lachhman Das,
Central Circle- 5162, Kolhapur road, Delhi.
17, PAN No: AA AFC0095K
Jhandenwala
New Delhi.

**Revenue by Ms. Rachna Singh, CIT DR
Assessee by Sh. P.K.Mishra, CA**

**Date of Hearing 05.07.2018
Date of Pronouncement 06.07.2018**

ORDER

PER BENCH :

Revenue preferred all these appeals challenging the orders of the learned Commissioner of Income Tax (Appeals)-II, New Delhi ("Ld. CIT(A)") for the assessment years 2000-01 to 2006-07.

2. Brief facts of the case are that the assessee i.e., Chetan Das Lachhmandas is a partnership firm engaged in the

business of Hing. They carry the business of producing edible Hing by processing of raw Hing. There was a search under section 132 of the Income Tax Act, 1961 ("the Act") on 13/12/2005 wherein certain evidences were found suggesting under invoicing of sales and purchases. Consequently assessment proceedings were taken up for the 6 years of falling in the block relevant to the date of search and also for the year under consideration in which the search took place i.e., 2000-01 to 2006-07. After following the procedure established under law the income of the assessee was recomputed by the Ld. AO by making certain additions on account of suppressing sale value of Hing, suppressing sale value of compound Hing, and suppressing of input output ratio of process of Hing. For the assessment years 2001-02 to 2006-07 there was addition on account of depreciation on foreign car also.

3. When the assessee preferred appeals, Ld. CIT(A) directed certain deletions of additions while sustaining a portion thereof. Both revenue and the assessee preferred appeals before the Tribunal in ITA Nos. 2247 to 2253/Del/2009 and ITA Nos. 2673 to 2679/Del/2009 respectively. A coordinate Bench of this Tribunal by way of a common order dated 20/11/2009 allowed the appeals of the assessee in part and dismissed the appeals of the revenue.

4. Challenging the dismissal of the revenue appeals, revenue approached the High Court in ITA No. 2021/2010

and batch of cases. The Hon'ble High Court by order dated 07/08/2012 set aside the order of the Tribunal for all the years under appeals, and remanded the appeals for disposal afresh and to decide them according to law.

5. Today we heard the Counsel on either side. It is the submission on behalf of the assessee that the assessments were framed by the Ld. AO without affording an opportunity to the assessee to put forth their case and to substantiate their claim by producing evidence. It is also submitted on behalf of the assessee that neither the documents that were seized at the time of search nor the statement of one Sh. JK Khanna @ Tainu, the broker recorded on 13/12/2005 were confronted to the assessee at any point of time during assessment proceedings. He, therefore, submitted that it is a fit case to afford an opportunity to the assessee to submit their claim supported by evidence before the Learned Assessing Officer so that the matter could be disposed off on merits and the just tax liability of the assessee could be assessed.

6. Insofar as the allegation that the assessment order is an exparte order is concerned, the revenue does not dispute the same. Ld. DR after verification of the assessment order submitted that it is so mentioned in paragraph No. 2 of the order also.

7. We have gone through the record. In all these matters the Ld. AO at the paragraph No. 2 of his order recorded that

in spite of notices under section 142(1) of the Act and also 143(2) of the Act alongwith questionnaire asking the assessee to comply with various details/replace/ clarification, no compliance was made by the assessee, which clearly goes to show that the assessee has scant regard for the process of law. Considering the non-compliance and the facts the Ld. AO proceeded ex parte to frame the assessment on the basis of the record. It is, therefore, clear that there is no participation of the assessee during assessment proceedings. Further it is not the case of the revenue that before framing the assessment for all these years either the seized material or the statement of Mr JK Khanna was either furnishing to the assessee or the assessee is confronted with the contents of the same to explain their version.

8. Ld. AR submitted that given an opportunity the assessee is ready and willing to cooperate with the Ld. AO for determination of their just tax liability. We have heard Ld. DR also. There is no denial of fact that the impugned orders are ex parte orders. So also there is no denial of the fact that the assessee was not furnished with the seized material or the statement of the broker nor were they confronted with the same seeking explanation on the same.

9. Having heard Ld. AR on either side and having regard to the facts and circumstances involved in this set of appeals, we are of the considered opinion that the ends of Justice would be met by allowing an opportunity to the assessee to

put forth their case before the Ld. AO with reference to the evidence, if any, available in their custody. With this view of the matter we set aside the orders of the authorities below and remand the matter to the file of the Ld. AO for framing the assessment for all these years afresh after affording an opportunity to the assessee of being heard. Grounds are answered accordingly.

10. In the result, appeals of the revenue are allowed for statistical purposes.

Order pronounced in the open court on 06.07.2018

Sd/-

(R.S. SYAL)

VICE PRESIDENT

Dated: 06.07.2018

Sd/-

(K. NARSIMHA CHARY)

JUDICIAL MEMBER

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	03.07.2018
Date on which the typed draft is placed before the dictating Member	03.07.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	06.07.18
Date on which the fair order is placed before the Dictating Member for pronouncement	06.07.18
Date on which the fair order comes back to the Sr. PS/PS	06.07.18
Date on which the final order is uploaded on the website of ITAT	06.07.18
Date on which the file goes to the Bench Clerk	06.07.18
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	