

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

Before Sh. N. K. Saini, AM and Sh. Sudhanshu Srivastava, JM

ITA No. 3463/Del/2015 : Asstt. Year : 2008-09

SNS Projects Pvt. Ltd., 1545/29, Naiwala, Karol Bagh, New Delhi-110005	Vs	Income Tax Officer, Ward-7(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AALCS6704M		

**Assessee by : Sh. C. S. Anand, Adv.
Revenue by : Sh. S. S. Rana, CIT DR**

Date of Hearing : 26.07.2018

Date of Pronouncement : 27.07.2018

ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 23.03.2015 of Id. CIT(A)-8, New Delhi.

2. Following grounds have been raised in this appeal:

"1. (a) That the Hon'ble CIT Appeal has erred in passing ex-party order without considering the reasons and facts produced during the appellant proceeding.

(b) That the order of Hon'ble CIT Appeal is bad in law and on facts and circumstances of the case.

(c) That the Hon'ble CIT Appeal has erred in confirming the reopening u/s 148, whereas all the facts details, etc. were produced before the Ld. Assessing Officer and Hon'ble CIT Appeal.

(d) That Ld. AO has erred in not providing opportunity to cross examine the complainant on the basis of which such addition has been made.

2. *That the Hon'ble CIT Appeal has erred in confirming an addition of Rs.82,38,000/- as all the documents, details, has been produced before the Ld. AO and Hon'ble CIT Appeal.*

3. *That the Hon'ble CIT Appeal has erred in confirming an addition of Rs.6,44,816/- as all the documents, details, has been produced before the Ld. AO and Hon'ble CIT Appeal.*

4. *That the above grounds are independent and without prejudice to one another.*

The appellant prays for leave to add, alter, modify and withdraw any of the grounds either before or at the time of hearing.”

3. From the aforesaid grounds, it is noticed that vide Ground Nos.1(a), (b) & (d), the grievance of the assessee relates to the *ex-parte* order passed by the ld. CIT(A) without providing opportunity.

4. Facts of the case in brief are that the assessee filed the return of income on 23.02.2009 declaring a loss of Rs.23,827/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Thereafter, the AO received a TEP from DIT(Investigation) and on that basis issued a notice u/s 148 of the Act to the assessee. In response, the assessee stated that the ITR had already been filed on 23.02.2009, the same may be treated to have been filed in response to the notice u/s 148 of the Act. Therefore, the AO framed the assessment u/s 143(3) of the Act by making the additions of Rs.86,82,816/- u/s 68 of the Act.

5. Being aggrieved the assessee carried the matter to the ld. CIT(A) who passed the *ex-parte* order by observing that on the

different dates fixed for hearing, the assessee filed the adjournment applications and the last was dated 11.03.2015 which was rejected. The Id. CIT(A) 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 the Id. CIT(A) passed the impugned order *ex-parte* without providing opportunity of being heard to the assessee and even did not decide the issues on merit. It was further submitted that the Id. Counsel for the assessee Sh. J. K. Hnada was suffering from health problems since September, 2014 and had been on-and-off the work. It was further submitted that due to medical conditions, the Id. Counsel for the assessee had not been in a perfect mental and physical health to attend to the work, therefore, sought the adjournment. In support of the above, letter dated 17.04.2015 written to the Pr. Commissioner of Income-tax (OSD) (Appeals)-8, New Delhi alongwith various medical reports were furnished which are placed on record.

7. In his rival submissions, the Id. CIT DR supported the order of the Id. CIT(A) and further submitted that whenever the case was fixed for hearing, the assessee did not appear before the Id. CIT(A). Therefore, there was no alternative except to decide the appeal of the assessee *ex-parte*.

8. We 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 of the assessee *ex-*

parte even when an application for adjournment was furnished by the assessee. The Id. CIT(A) although rejected the application for adjournment but he had not given any cogent reason for the same. On the contrary, the Id. Counsel for the assessee submitted that the then Counsel for the assessee was suffering from health problems, therefore, could not appear on the date of hearing and that the Id. CIT(A) has not decided the issues on merit. It is well settled that nobody should be condemned unheard as per the *maxim* “*audi alteram partem*”. We, 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 Court on 27/07/2018)

Sd/-
(Sudhanshu Srivastava)
JUDICIAL MEMBER

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

Dated: 27/07/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR