

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC, CHANDIGARH**

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER

**ITA No. 419/Chd/2018**  
(Assessment Year: 2013-14)

Sh. Harbans Lal  
S/o Sh. Ganpat Ram,  
H.No. -254, Sector-4  
Block D, Shastri Nagar,  
Mandi, Gobindgarh

Vs. The ITO  
Ward Nabha Camp  
at Mandi Gobindgarh

PAN No. ALZPS3021K

(Appellant)

(Respondent)

Assessee By : Ms. Shubhika  
Revenue By : Shri Manoj Kumar  
Date of hearing : 21/06/2018  
Date of Pronouncement : 07/08/2018

**ORDER**

**PER DIVA SINGH, J.M.**

The present appeal has been filed by Assessee assailing the correctness of the order dt. 06/02/2018 of CIT(A)-1, Ludhiana pertaining to A.Y. 2013-14 on the following grounds of appeals:

1. *That the impugned order is bad both on facts and law.*
2. *That the Id. Appellate Authority has wrongly and illegally confirmed the assessment order which was without jurisdiction, without complying the mandatory provision of law because notice u/s 143(2) was neither properly issued nor actually served upon the Appellant besides being barred by time.*
3. *That, without prejudice, the Id. Appellate Authority has wrongly and illegally confirmed the ex-party order passed u/s 144 ignoring the facts and circumstances of case.*
4. *That, without prejudice, the Id. Appellate Authority has wrongly and illegally confirmed the addition of Rs. 8,02,394/- in trading account and Rs. 1,00,000/- being disallowance u/s 80C against the facts and circumstances of case.*
5. *That the Id. Appellate Authority has wrongly and illegally confirm the charging of interest u/s 234B and 234C.*

2. At the time of hearing an adjournment application was moved on behalf of the assessee seeking time. Considering the fact that the impugned order had been passed on the basis of written submissions and without hearing the assessee and noting the fact that the grievance of the assessee qua the additions made by the Assessing Officer still remains the adjournment application was rejected. The record shows that the CIT(A) considering the written submissions held as under:

**5. In the appellate proceedings, besides challenging the service of notice, nothing worthwhile was stated.** However, as is evident, the impugned assessment order is based on estimate and disallowances have been made by just adopting a percentage of the expenses claimed in the return. While acknowledging that the AO had no other option but to estimate because of the continued non-cooperation on the part of the appellant, yet it is felt that once an enhanced GP rate of 7% as against declared 5.2% has been adopted, there is no reasonable scope for making further estimated disallowances out of expenses incurred on "power and consumption", "repair to machinery" and "salary and wages". The AO is, therefore, directed to delete the additions of Rs. 2,54,848/-, Rs. 13,161/- & Rs. 87,886/-. Since no evidence has been filed regarding the claim of deduction under chapter VIA, the action of the AO in disallowing the same is confirmed. Thus, the additions of Rs. 8,02,394/- on trading account and Rs. 1 lakh on account of lack of evidence regarding the claim of deduction are sustained. It is ordered accordingly.

(emphasis supplied)

3. On perusal of the above it is evident that the tax payer has not been able to advance his case in the so called written submission taken on record and the grievance persists. On a reading of the conclusion and the reasoning of the CIT(A) it would demonstrate that on account of lack of opportunity of being heard the assessee's appeal before the CIT(A) wherein the assessment order was challenged both on merits as well as on jurisdiction failed for want of representation. Right to be heard forms the bed rock of the principles of natural justice. The word natural justice is derived from the Roman word " Jus naturale" which presupposes principles of natural law including justice, equity, fair play and good conscience. Fair play pre supposes fair notice of charge, and place of hearing, opportunity of effective hearing to address the charge and speaking order addressing the reasons for agreeing or disagreeing with the claims put forth. Audi alterem partem which is one of the foundational and fundamental bed rocks of natural justice means that no one should be condemned un heard. Though these Rules are not necessarily codified but which evolved over the years and are read into not only when statutory provisions so provide but also in quasi administrative decisions whereby the rights / interests of the party is adversely effected than it necessitates that the procedure required to be adhered to envisage a right to be heard. No doubt a party may choose to waive the right to be heard and instead choose to rely on written submissions, however it is the duty of the Court to ensure that the waiver so made is intelligently made and with full knowledge and understanding i.e; with the foreknowledge that the right to be heard exists. The record is silent on this aspect. Accordingly since there is nothing on record to show that the right to be

heard was consciously and knowingly waived. In view thereof to set right this deficit in the order passed the impugned order is restored back to the file of the CIT(A) with a direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. Said order was pronounced in the open Court at the time of hearing itself.

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

**Sd/-**  
**(DIVA SINGH)**  
**JUDICIAL MEMBER**

Dated : 07/08/2018

AG

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR