

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

Before Sh. N. K. Saini, AM and Smt. Beena A Pillai, JM

ITA No. 5558/Del/2015 : Asstt. Year : 2005-06

Uniword Telecom Ltd., A1/24, Azad Apartment, Aurobindo Marg, New Delhi-110016 Or Satish Aggarwal & Associates, 4/5B, 1 st Floor, Asaf Ali Road, New Delhi	Vs	DCIT, Circle-18(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACU5105D		

Assessee by : Sh. Dharender Kumar, Adv.

Revenue by : Smt. Meeta Singh, Sr. DR

Date of Hearing : 06.09.2018

Date of Pronouncement : 07.09.2018

ORDER

Per N. K. Saini, AM:

This is appeal by the assessee against the order dated 21.08.2015 of Id. CIT(A)-22, New Delhi.

2. Following grounds have been raised in this appeal:

“(1) That the order of the Learned CIT (Appeals)-22 New Delhi is arbitrary, biased and bad in law and in facts and circumstances of the case in so far as it confirms the addition made by the Assessing Officer.

(2) That the Learned CIT (Appeals) has grossly erred in not quashing the assessment order passed pursuant to illegal reopening of assessment.

(3) That the Learned CIT (Appeals) has grossly erred in ignoring the fact that the original assessment of the

appellant had been completed under section 143(3) and issue of notice under section 148 amounted to change of opinion.

(4) That the Learned CIT (Appeals) has grossly erred in passing an ex-parte order without affording a proper and meaningful opportunity to the appellant to represent its case.

(5) That the Learned CIT (Appeals) has grossly erred in confirming the addition of Rs. 43,49,966/- in respect of purchases made from M/s. Singh Electronics and M/s. Tony Electronics being the 10% of purchases made from them ignoring the ratio of the decision of IT AT and Delhi High Court in their orders against original assessment for the assessment year 2005-06.

(6) That the Learned CIT (Appeals) has grossly erred in confirming an addition of Rs. 3,83,80,000/- made under section 68 by the Assessing Officer.

(7) That the Learned CIT (Appeals) has grossly erred in confirming an addition of Rs. 7,67,000/- made by the Assessing Officer on conjectures and surmises for alleged payment of commission @ 2% on alleged accommodation entry of Rs. 3,83,80,000/- obtained by the appellant.

(8) That the Learned CIT (Appeals) has grossly erred in confirming the addition made by the Assessing Officer under section 68 of the Act without providing an opportunity to the appellant to cross examine the alleged accommodation entry provider thus violating the principles of natural justice and equity.

(9) That the appellant craves leave to add, alter or delete the above grounds of appeal at the time of hearing.”

3. Vide ground no. 4, the grievance of the assessee relates to the *ex-parte* order passed by the Id. CIT(A) without providing an appropriate opportunity of being heard granted to the assessee.

4. Facts of the case in brief are that the assessee filed the return of income on 31.10.2005 declaring an income of Rs.1,08,85,191/-. However, the assessment was framed at an income of Rs.5,84,36,706/- by making the various additions.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) observed that various notices were issued, however, there was no compliance, he dismissed the appeal *ex-parte* by observing in paras 2 & 4 of the impugned order as under:

“2. The details of notices issued are as under:

<i>Sl. No.</i>	<i>Date of Notice</i>	<i>Date of Hearing</i>	<i>Compliance</i>
1.	31.07.2014	20.08.2014	<i>Adjournment request. Adjourned to 27.08.2014</i>
2.		27.08.2014	<i>Adjournment request. Adjourned to 19.09.2014</i>
3.		17.09.2014	<i>Adjournment request. Adjourned to 20.10.2014</i>
4.		20.10.2014	<i>Adjournment request. Adjourned to 12.11.2015</i>
5.		12.11.2014	<i>Adjournment request.</i>
6.	27.01.2015	09.02.2015	<i>Adjournment request filed on 20.01.2015. Adjourned to 04.03.2015</i>
7.		04.03.2015	<i>No compliance</i>
8.	10.04.2015	28.04.2015	<i>No compliance. Notice was served on</i>

			<i>authorized representative.</i>
9.	08.05.2015	20.05.2015	<i>Adjournment request. Adjourned to 27.05.2015</i>
10.		27.10.2015	<i>Adjourned to 23.06.2015 on request</i>
11.		23.06.2015	<i>No compliance</i>
12.	21.07.2015	13.08.2015	<i>Letter/notice returned unserved. AR informed. Adjournment request dated 13.08.2015 filed. Adjourned to 20.08.2015.</i>
13.		20.08.2015	<i>No compliance</i>

4. From a perusal of above, it is apparent that the appellant has been granted several opportunities, but, there has been no compliance except filing of few adjournment applications. The last adjournment application was filed on 13.08.2015 and the appeal was adjourned to 20.08.2015. However, there has been no compliance on 20.08.2015.

6. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that the Id. CIT(A) without providing a due and reasonable opportunity of being heard, dismissed the appeal of the assessee and even he has not discussed the issues raised by the assessee on merit.

7. In her rival submissions, the Id. Sr. DR strongly supported the impugned order passed by the Id. CIT(A) and submitted that various opportunities of being heard were provided but the assessee sought adjournment and even on the last date i.e. on 20.08.2015 when the case was fixed for hearing, there was no compliance.

8. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed from para 2 of the impugned order that the Id. CIT(A) mentioned that the letter/notice for the date of hearing on 30.08.2015 was returned unserved and the case was adjourned to 20.08.2015 but there was no compliance on the said date. However, it is not clear as to whether the last date of hearing i.e. 20.08.2015 was communicated to the assessee or not. 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 Open Court on 07/09/2018)

Sd/-
(Beena A. Pillai)
JUDICIAL MEMBER

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

Dated: 07/09/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR