

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

Before Sh. N. K. Saini, AM and Ms. Suchitra Kamble, JM

ITA No. 2549/Del/2018 : Asstt. Year : 2014-15

Arvind Jain, 103/5, Saurth Krishna Puri, Muzaffarnagar, Uttar Pradesh-251002	Vs	Income Tax Officer, Ward-1(1), Muzaffarnagar
(APPELLANT)		(RESPONDENT)
PAN No. AFLPJ0033J		

Assessee by : None

Revenue by : Sh. Surender Pal, Sr. DR

Date of Hearing : 20.09.2018

Date of Pronouncement : 27.09.2018

ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 09.01.2018 of Id. CIT(A), Muzaffarnagar.

2. During the course of hearing nobody was present on behalf of the assessee neither any adjournment was sought. It, therefore, appears that the assessee is not interested to prosecute the matter. Therefore, the appeal is decided *ex-parte* after hearing the Id. Sr. DR and by considering the material available on record.

3. Following grounds have been raised in this appeal:

"1. The Ld CIT(A) has erred in not condoning the delay in filing the appeal for 40 days before it against order of AO.

2. The Ld CIT(A) has erred in passing ex parte order without disposing the grounds on merits and providing proper opportunity of hearing.

3. *The Ld CIT(AO has erred in confirming the addition of Rs. 3,63,478 on account of Low G.P. Rate as compared to last year.*

4. *The Ld CIT(A) has erred in confirming the addition of Rs. 5,68,000 on account of alleged unexplained cash receipts.*

5. *The Ld CIT(A) has erred in confirming the addition of Rs. 1,50,000 under section 40A(3) of Income Tax Act 1961.*

6. *The order of the Ld. CIT is against law and facts of the case.*

7. *The appellant craves the right to add, amend or withdraw any grounds of appeal at the time of hearing.”*

4. From the aforesaid Ground No. 2, it is noticed that the main grievance of the assessee relates to the *ex-parte* order passed by the Id. CIT(A) without providing an opportunity of being heard to the assessee.

5. Facts of the case in brief are that the assessee e-filed the return of income on 26.09.2014 declaring an income of Rs.5,97,680/-. Later on, the case was selected for scrutiny. The AO framed the assessment at an income of Rs.16,79,160/- by making the various additions.

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) who dismissed the appeal *ex-parte* in *limine*. It is also noticed that the Id. CIT(A) mentioned in the impugned order that the assessee had not furnished a reasonable cause for not filing the appeal within the stipulated time. Therefore, the appeal filed by the assessee was not valid.

7. Now the assessee is in appeal. The ld. Sr. DR strongly supported the impugned order passed by the ld. CIT(A).

8. After considering the submissions of the ld. Sr. DR and the material on record, it appears that the ld. CIT(A) dismissed the appeal of the assessee *ex-parte* without bringing any material on record to substantiate that the notice for hearing on 03.01.2018 was served upon the assessee. In the present case, it is also not clear as to whether the ld. CIT(A) asked the assessee to furnish the reason/explanation for delay in filing the appeal. 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 case back to the file of the ld. 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, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Open Court on 27/09/2018)

Sd/-

(Suchitra Kamble)

JUDICIAL MEMBER

Dated: 27/09/2018

Subodh

Copy forwarded to:

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

Sd/-

(N. K. Saini)

ACCOUNTANT MEMBER

ASSISTANT REGISTRAR