

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 3452/Del/2018
Assessment Year: 2008-09

BIJENDRA SINGH,
C/O CA, AKHLINDRA SINGH,
D-96, SECTOR-56,
NOIDA-201301 (UP)
(PAN: AXRPS2061D)

VS. ITO, WARD 1(2),
NOIDA

(APPELLANT)

(RESPONDENT)

Assessee by : Sh. Rakesh Kumar Sehgal, CA
Revenue by : Sh. B.S. Anant, Sr. Dr.

ORDER

This appeal has been filed by the Assessee against the Order dated 30.6.2016 of the Ld. Commissioner of Income Tax (Appeals)-I, Noida relevant to assessment year 2008-09.

2. The grounds raised in the appeal read as under:-

1. None of the notices for fixation of appeal was received by the appellant. Even the assessment order was not received and therefore a certified copy was obtained by the appellant for filing appeal with the Hon'ble Tribunal. In the given circumstances of these facts the decision of the Commissioner ex party and that too without determination of each of the grounds of appeal is contrary to the principles of natural justice and Section 250(6) of the Income Tax Act, 1961 and therefore,

the decision of ex parte dismissal of appeal by the CIT(A) is unlawful and is liable to be set aside.

2. The reopening of the case u/s. 147/148 solely on the basis of AIR information from CIT(CIB), Kanpur, that cash of Rs. 16,11,000/- was deposited in saving bank of the appellant, is contrary to law and therefore, the reassessment initiation is unlawful and consequently the reassessment order framed on the basis of such unlawful initiation is also unlawful and is liable to be quashed.

Submission to the Hon'ble Tribunal on this ground

Although the above ground was not specifically taken up in Form 35 filed with the CIT(A) but is covered under the gernal ground no.1 However, it is submitted that the ground could have been filed with CIT(A) as an additional ground but the order was decided ex parte. It is further submitted that the ground is a legal ground and the appellant is not precluded from raising this legal issue at this stage of appeal in view of the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co Limitd vs. CIT (1998) 223 ITR 383.

3. The addition of Rs. 14,44,859/- as unexplained cash deposit by the AO and dismissal of the same by CIT(A) is contrary to facts and law and therefore the addition is liable to be deleted.

4. *The appellant craves leave to add or amend any of the grounds of appeal.*

3. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

4. During the hearing, Ld. A.R. of the assessee, has stated that AO has passed the exparte order u/s. 144/147 of the Income Tax Act, 1961 (in Short "Act") and similarly, the Ld. CIT(A) has also passed the exparte order and upheld the action of the AO, without giving sufficient opportunity to the assessee. He requested that the matter may be set aside to the file of the AO to decide the same afresh, under the law, after giving adequate opportunity of being heard.

5. Ld. DR did not raise any objection to the request of the Id. counsel for the assessee.

6. I have heard both the parties and perused the records. I have also gone through the order passed by the revenue authorities as well as the contention raised by the assessee in the grounds of appeal. I find force in the arguments of the Ld. Counsel of the assessee that AO has completed the assessment vide exparte order dated 03.2.2016 u/s. 147/144 of the Income Tax Act and similarly, Ld. CIT(A) also passed the exparte order dated 30.6.2016 and upheld the action of the AO, without giving sufficient opportunity to the assessee. Therefore, in the interest of justice, the issues in dispute are set aside to the file of the AO with the directions to decide the same afresh under the law, after giving adequate opportunity of being heard to the assessee. The assessee is also

directed to file all the necessary documents/evidences, if any, to substantiate his case and fully cooperate with the AO in the proceedings and did not take any unnecessary adjournment.

7. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced on 01-11-2018.

**Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER**

Dated : 01-11-2018

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.