

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC' NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

**I.T.A .No.-4591/Del/2018  
(ASSESSMENT YEAR-2010-11)**

Sanjay Sharma C-54, Gujranwala Apartment, Block-J, Vikaspuri, New Delhi. <b>PAN No. AHCPS8326E</b> <b>(APPELLANT)</b>	vs	ITO Ward 44(1), New Delhi. <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Shri P.C. Yadav, Advocate</b>
<b>Respondent by</b>	<b>Shri S.L. Anuragi, Sr. DR</b>

<b>Date of Hearing</b>	<b>22/11/2018</b>
<b>Date of Pronouncement</b>	<b>22/11/2018</b>

**ORDER**

This appeal filed by the Assessee is directed against the impugned order dated 27.04.218 of the Ld. CIT(A), New Delhi relevant to assessment year 2010-11 on the following grounds:

**“Ground No. 1**

*In its impugned order, the CIT(Appeal) has relied on the information available with Assessing Officer and has passed the order dismissing the appeal filed by the aggrieved assessee before the CIT(Appeal).*

*As per section 250(6) of the Income Tax Act, 1961, the CIT(A) should dispose of the appeal in writing and shall state the points for determination of the decision thereon and the reason for such determination.*

*CIT(Appeals) have not decided the appeal on merit. He has not gone through the grounds of appeals filed and has given no findings on the grounds of appeal.*

*Therefore, the mandate of the status is that the CIT(A) has to give his findings on merits on the basis of material information available with the Assessing Officer evident*

*presented by the assessee to be considered. There is no exception provided for ex parte order. A reasoned order based on the merits of the case is pre requisite for the disposal of an appeal. Therefore, the Ld. CIT(A) has erred in passing the order ex parte without giving the assessee a reasonable opportunity to arrange and present the documents.*

Ground No. 2

*In its impugned order, the CIT(Appeals) has placed reliance upon the judgment of the Apex Court in the case of B.N. Bhattacharji and Another (118 ITR 461) (at pages 477 and 478) that in cases where the assessee does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution.*

*A quasi-judicial authority is expected to deliver justice in all circumstances and not be weighed down by rigors of procedures and any other technicality. The contention that assessee is not interested is incorrect as assessee filed the appeal before the CIT(A) against the order of the Assessing Officer. Meanwhile, the assessee got illness and due to medical reason the assessee was not able to appear on the adjourned date. There was sufficient cause for non-appearance and could be verified with medical certificate. It implies that, assessee is mentally prepared to go for the appeal and is effectively pursuing it. Therefore, reliance placed by the Ld. CIT(A) is not correct and this also defeats the purpose enshrined in the principles of natural justice whereby both the parties should be given adequate opportunity of being heard.*

Ground No. 3

*In its impugned order, the Assessing Officer (ITO) had computed the income at Rs. 12,71,500/- on account of cash deposit in saving bank account and on account of other receipt on the ground that assessee has not filed the return of income.*

*The method of computation adopted by the Assessing Officer is not correct and is at the fancy desire of the Ld. Assessing Officer. The aggrieved assessee's gross total income do not exceed the maximum amount which is not chargeable to tax. Therefore, the assessee is not required*

*to file the return and addition made for Rs. 12,71,500/- should be deleted.*

*Further, proper opportunity of being heard has not been given to the assessee and whole cash deposit was considered as income of the assessee and assessed the income u/s 144 by passing ex parte assessment order.”*

2. The facts narrated by the revenue authorities are not disputed by both the parties, therefore, there is no need to repeat the same for the sake of convenience.

3. At the time of hearing, Ld. Counsel for the assessee stated that revenue authorities have passed the ex parte orders without hearing the assessee nor his authorized representative which is contrary to the principle of natural justice. He submitted that assessee is an old lady and suffering from cardiac problems, her daughter was also suffering from Dengue at that point of time and could not appear before the revenue authorities. He requested that matter may be set aside *denovo* to the Assessing Officer to decide the same afresh as per law. He also undertakes to cooperate in the assessment proceedings and also undertake to file details required by the Assessing Officer. Ld. DR has not raised any objection on the request of the Ld. Counsel for assessee.

4. After hearing both the parties, I am of the view that ex parte orders have been passed by the revenue authorities against the assessee, however, the reasons mentioned by the Ld. Counsel for the assessee regarding non-appearance before the revenue authority is the illness of the assessee and as well as her daughter is also suffering from Dengue at that point of time believing the statement

made by the Ld. Counsel for the assessee and in the interest of justice, I set aside the issues in dispute to the AO to make the fresh assessment as per law after giving full opportunity to the assessee and direct the assessee through her Counsel to appear before the Assessing Officer on 14.02.2019 at 10.00 a.m. There is no need to issue notice by the Assessing Officer to the assessee for 14.02.2019 because this order has already been pronounced in the presence of both the parties.

5. In the result, appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced on 22.11.2018.

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

Dated: 22/11/2018

*\*Kavita*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

		Date
1.	Draft dictated on	22.11.2018
2.	Draft placed before author	22.11.2018
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	22.11.2018
6.	Order Pronounced and Uploaded	26.11.2018
7.	File sent to the Bench Clerk	26.11.2018
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	