

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

Before Sh. N. K. Saini, Hon'ble Vice President

ITA No. 3435/Del/2018 : Asstt. Year : 2009-10

Parampara Jewellers Sunny Pvt. Ltd., 50, 1 st Floor, Rajdhani Enclave, Pitampura, New Delhi-110034	Vs	Income Tax Officer, Ward-19(3), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACP5421B		

Assessee by : Sh. Rahul Kochar, Adv.

Revenue by : Sh. Pradeep Kumar Meel, Sr. DR

Date of Hearing : 23.10.2018	Date of Pronouncement : 22.11.2018
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ORDER

This is an appeal by the assessee against the order dated 09.03.2018 of ld. CIT(A)-40, Delhi.

2. Following grounds have been raised in this appeal:

"1. That on the facts and in the circumstances of the case and in law, the order passed by Ld. CIT(A) is bad in law and against the principles of natural justice.

2. That the reasons u/s 147 of the Income Tax Act, 1961 were recorded on borrowed satisfaction, without application of mind and without there being any tangible material at the time of recording of reasons, therefore whole of the reassessment proceedings were liable to be quashed.

3. In the facts and circumstances of the case and in Law, whether the Ld. AO justified in making additions of Rs. 10,00,000 and Rs. 18,000 merely on presumption basis and on account of non attendance of Directors of Ad Fin Capital Services Pvt. Ltd. and Shailini Holdings Ltd.?

4. Without cognizance of the facts of the case, Ld CIT(A) has erred in confirming the addition of Rs 18,000 made by Ld AO in respect of alleged commission paid.

5. In the facts and circumstances of the case, whether the Ld. CIT(A) New Delhi, was justified in not allowing the opportunity instead of specific request of adjournment and dismissing the appeal merely on this count?

6. That the penalty proceedings initiated under section 271(1) of the Act and levy of interest under section 234B of the Act are bad in law.

The above grounds of appeal are mutually exclusive and without prejudice to each other.

The appellant craves to add, amend, alter, delete, rescind, forgo or withdraw grounds of appeal either before or during the course of proceeding before Hon'ble Tribunal in the interest of natural justice."

3. Facts of the case in brief are that the assessee e-filed the return of income on 04.09.2009 declaring an income of Rs.33,840/-. However, the AO framed the assessment at an income of Rs.10,51,838/- by making an addition of Rs.10,00,000/- on account of accommodation entries and Rs.18,000/- on account of commission to receive the accommodation entry.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who dismissed the appeal of the assessee *ex-parte* by observing that the assessee was not interested in filing any detail and that that notices were issued through Email as well as by Speed Post but no compliance had been made to any of the notices except seeking the adjournment.

5. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that due and reasonable opportunity of being heard was not provided by the Id. CIT(A), even

when a specific request for adjournment was made. Therefore, the ld. CIT(A) was not justified in confirming the arbitrary addition made by the AO.

6. In his rival submission, the ld. Sr. DR reiterated the observations made by the authorities below and strongly supported the impugned order passed by the ld. CIT(A).

7. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that the ld. CIT(A) passed the impugned order *ex-parte* and dismissed the appeal of the assessee for non-prosecution. It is also noticed that the assessee sought adjournment when the case was fixed for hearing by issuing the notice through Email dated 12.02.2018. However, the ld. CIT(A) had not mentioned as to whether the reasons given by the assessee for seeking the adjournment were genuine or not. It is well settled that nobody should be condemned unheard as per the *maxim "audi alteram partem"*. I, 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.

8. In the result, the appeal of the assessee is allowed for statistical purposes.
(Order Pronounced in the Court on 22/11/2018)

Sd/-
(N. K. Saini)
VICE PRESIDENT

Dated: 22/11/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR