

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

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER

**ITA No.-13/Del/2018
(Assessment Year: 2013-14)**

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| R M FINANCIA SERVICES PVT. LTD. B-45, Satyawati Colony, Ashok Vihar, Phase-3, Delhi 110052 PAN : AAACR4407R | vs | ITO, Ward-20(3), New Delhi |
| Assessee by | None | |
| Revenue by | Shri S.L.Anuragi, Sr. DR | |

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| Date of Hearing | 27.12.2018 |
| Date of Pronouncement | 27.12.2018 |

ORDER

PER N.S.SAINI, ACCOUNTANT MEMBER :

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-25, New Delhi dated 29.09.2017 for assessment year 2013-14. The assessed has raised following grounds of appeal :-

- "1. On the facts and circumstances of the case the order passed by the Ld. CIT(A) u/s. 250 of the Act is bad both in eyes of law and in facts.*
- 2. On the facts and circumstances of the case the order passed by the Id. CIT(A) has erred in giving an opportunity of being heard.*
- 3. On the facts and circumstances of the case the Id. CIT(A) has erred in upholding the action of the Assessing Officer in making assessment of Rs. 8,20,500/- by disallowing a loss of Rs. 4,22,811/- as against NIL income declared by the appellant.*
- 4. The Id. CIT(A) has not considered the facts that the observation made by the Id. AO is general in nature and not backed by any evidence in that regard."*

2. In ground no. 2 of the appeal - the grievance of the assessee is that the Commissioner of Income Tax (Appeals) has erred in not giving proper opportunity of hearing before disposing of the appeal of the assessee.

3. Notice of hearing was sent to the assessee on 27.09.2018 for fixing the hearing of the appeal on 27.12.2018. Non appeared when the case was called for hearing and neither any application for adjournment of hearing is filed. The bench was of the view that the appeal of the assessee can be disposed of in absence of the assessee. Hence, the bench proceeded to hear the Ld. Departmental Representative, Shri S.L.Anuragi, Sr. DR and dispose of the appeal.

4. The facts of the case are that the Commissioner of Income Tax (Appeals) has observed in his order at page 4 para 7.5.1 that notice was issued from his office on 25.07.2017 and sent by speed post fixing the date of hearing on 17.08.2017. The said notice was returned back by the postal authority unserved on 02.08.2017 with the remark "incomplete address". Therefore he inferred that the assessee has either left the premises or has given wrong address and deliberately ensured that notice could not be served upon the assessee. Hence, he dismissed the appeal of the assessee observing that sufficient opportunity were given to the assessee during the course of assessment proceedings as well as appellate proceedings but the assessee deliberately avoided taking those opportunities.

5. In the above facts and circumstances of the case, in my considered view, in order to render substantial justice to the assessee, the matter should be remanded back to the file of the

Commissioner of Income Tax (Appeals) to dispose of the appeal of the assessee afresh on merits of the issues raised by the assessee in the appeal. It is the duty of the Commissioner of Income Tax (Appeals) to dispose of the appeal of the assessee on merits on the basis of materials available on record even though the assessee fails to put in appearance on the date of hearing fixed by him.

6. The Departmental Representative, Shri S.L.Anuragi, Sr. DR had no objection to the matter being restored back to the file of the Commissioner of Income Tax (Appeals) for fresh adjudication. Hence, I set aside the order of the Commissioner of Income Tax (Appeals) and remand the matter back to his file for adjudication of the appeal of the assessee afresh after allowing proper opportunity of hearing to the assessee.

7. In the result appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the Open Court on 27th
December, 2018 at New Delhi.**

**Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER**

Dated: 27.12.2018
BR

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Date of dictation | 27.12.2018 |
| Date on which the typed draft is placed before the dictating Member | 27.12.2018 |
| Date on which the typed draft is placed before the Other Member | 27.12.2018 |
| Date on which the approved draft comes to the Sr. PS/PS | 27. 12.2018 |
| Date on which the fair order is placed before the Dictating Member for pronouncement | 27.12.2018 |
| Date on which the fair order comes back to the Sr. PS/PS | 27.12.2018 |
| Date on which the final order is uploaded on the website of ITAT | 27.12.2018 |
| Date on which the file goes to the Bench Clerk | |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |