

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI "FRIDAY-F" BENCH, NEW DELHI)

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA NO. 3965/DEL/2018
Asstt. Year : 2009-10

SAHAB SINGH
VILLAGE BHATTA,
PO DANKAUR, NOIDA,
UTTAR PRADESH
(PAN: HNOPS9360H)
(Applicant)

Vs. ITO, WARD 3(3),
NOIDA
(Respondent)

Applicant by : Sh. Ravinder Pal Bansal, Adv.
Respondent by : Sh. Surender Pal, Sr. DR.

ORDER

PER H.S. SIDHU, JM

The assessee has preferred an Application for Early hearing in the main Appeal. However, at the time of hearing, both the parties agreed that Ld. CIT(A) has decided the case of the assessee exparte without giving sufficient opportunity to the assessee. Therefore, the main appeal may be decided today itself. Accordingly, the Application for early hearing has become infructuous and dismissed as such.

However, the main appeal has been directed against the impugned order dated 28.3.2018 passed by the Ld. CIT(A)-I, Noida pertaining to assessment year 2009-10.

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

1. That the Ld. Officer has erred in passing the order u/s 144/147, in absentia, to the best of judgement and the Ld. CIT (Appeal)-1 has further erred in confirming the action of the authorities below and has rejected the appeal of the appellant.

2. That the Ld. Authorities below has further grossly erred in treating the entire deposits of Rs.5000000/-, as alleged, as income from undisclosed sources and added the same in the income of the appellant. The Ld. CIT(Appeals)-1 has further grossly erred in confirming the action of the authorities below.

3. That the Ld. CIT(Appeals) has rejected the appeal of the appellant on the plea of taking repeated adjournments whereas the appellant sought one adjournment due to the ailment of the counsel and further notice for 21.03.2018, which was received too late i.e on the date fixed for hearing. On the said date

the Counsel on behalf of the appellant duly appeared and sought adjournment for preparing the case. Instead the Ld. CIT(Appeals)-1 has granted the adjournment application and has rejected the appeal which is against the principle of law of natural justice and equity. In other words the Ld. CIT(Appeals)-1 has deprived the appellant to produce his case and discuss the same on merits.

4. That the plea of the Ld. CIT(Appeals)-1 in regard to the filing of appeal late is against facts and bad in law in as much as the appellant filed the appeal as and when the copy of order was received. The Ld. CIT(Appeals) has taken this view without going into the facts and circumstances of the case. The appellant has filed the appeal within stipulated time i.e. within one month from the date of receipt. If at all there was any adverse material on record the same should have been brought on record. But the Ld. CIT(Appeals)-1 has failed to do so. So much so no remand report has ever been called for. The Ld. CIT(Appeals)-1 has taken a very harsh view.

5. That the appellant was deprived to plead his case on merits by not allowing him any opportunity of being heard. There is a principle laid down while taking any adverse inference a proper opportunity of being heard must be provided to the aggrieved party but in the instant case no such opportunity has been given and the Ld. CIT(Appeals)-1 has hastily proceeded to reject the appeal of the appellant.

6. That the Ld. CIT(Appeals) has confirmed the additions of Rs.5000000/- without going into the merits and facts and circumstances of the case.

7. That the Ld. CIT(Appeals) has drawn an inference about the issue of notices u/s 148 and other notices is against fact and law. It is incumbent upon the authorities below to ascertain the service of notices.. But in the instant case the authorities below and the Ld. CIT(Appeals)-1 has never cared to do so. Admittedly notices were issued at the address of the appellant but those notices have never been served upon the appellant at any stage. The onus lies upon the authorities below and in the instant case the

authorities below and the Ld. CIT(Appeals)-1 has failed to discharge their duties.

8. That there were a lot of facts which were also never taken into consideration. The appellant, through his brother, has filed a written submission before the Ld. Authorities below but the same was neglected and never taken into consideration. Moreover it was also brought in the notice of the authorities below that the saving account was in the name of three persons, appellant and his two brothers.

9. That the action of the Ld. authorities below and the Ld. CIT(Appeals)-1 is arbitrary, bad in law, without justification and illegal. There is nothing on record to suggest such an addition moreover the assessment made u/s 144/147 is absolutely illegal as no notice u/s 148 has ever been served upon the appellant. In the absence of such a notice the order so passed by the Ld. Authorities below is against facts and bad in law.

10. That as stated above the bank account in question is in the name of three persons, appellant

and his two brothers so addition made only in the hands of the appellant is also against facts and law.

11. In view of the above facts and circumstances of the case the orders passed by the Ld. Authorities below and Ld. CIT(Appeals)-1 are against facts, arbitrary, bad in law, based on surmises, suffers from legal infirmity and illegal. The orders so passed are liable to be set-aside having regards to the facts and circumstances of the case.

12. That any other ground(s) may please also be urged at the time of hearing of appeal.

Prayer

In the absence of notice u/s 148 the order so passed being void in ab initio, therefore, liable to be cancelled.

The addition of Rs.5000000/- being illegal is also liable to be cancelled.

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

4. We have heard both the parties and perused the records available with us, especially the orders of the authorities below. We find that AO has passed the exparte order dated 09.12.2016 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 dated 28.3.2018 by only upholding the order of the AO and did not pass a speaking order, which is not sustainable in the eyes of law. Keeping in view of the facts and circumstances of the case, the issues involved in the main Appeal No. 3965/Del/2018 (AY 2009-10) are set aside to the file of the Ld. CIT(A) with the directions to decide the same afresh, in accordance with law after giving adequate opportunity of being heard to the assessee and pass a speaking order. The assessee is also directed to fully cooperate with the Ld. CIT(A) in the proceedings and did not take any unnecessary adjournment and also produce necessary evidences before him to substantiate his case.

5. In the result, the Assessee's Application for Early Hearing is dismissed and the Main Appeal is allowed for statistical purposes in the aforesaid manner.

Order pronounced on 25-03-2019.

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

Date 25/03/2019
SRBHATNAGAR

Copy forwarded to: -

1. Appellant 2. Respondent
5. DR, ITAT

TRUE COPY

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

3. DIT 4. CIT (A)

By Order,

Assistant Registrar, ITAT,
Delhi Benches

