

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

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

I.T.A. No. 6230/Del/2018  
Assessment Year: 2010-11

HARVIR,  
C/O SAURABH GOYAL &  
ASSOCIATES,  
2<sup>ND</sup> FLOOR,  
HOUSE NO. 171, SECTOR-21A,  
FARIDABAD  
(PAN: AENPH3679B)  
**(ASSEESSEE)**

vs. ITO, WARD 2(1),  
GURGAON  
HARYANA

**(RESPONDENT)**

**Assessee by:** Sh. Saurabh Goyal, CA

**Revenue by:** Sh. SL Anuragi, Sr. DR.

**ORDER**

This appeal is filed by assessee against the Order dated 29.6.2018 passed by the Ld. CIT(A-1), Gurgaon relating to Assessment Year 2010-11 on the following grounds:-

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in passing the impugned ex-parte order and that too without providing adequate opportunity of being heard and without observing the principle of natural justice.
2. That in any case and in any view of the matter, action of Ld. CIT(A) in passing the impugned ex-parte order is bad in law and against the facts and circumstances of the case.
3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in

law and on facts in not quashing the impugned reassessment order passed by Ld. AO u/s 144/147 and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO and that too without serving mandatory notice u/s 148, 142(1) and show cause notice u/s 144 of the Act and without giving proper opportunity of being heard.
5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not considering the submissions of assessee submitted via registered post on dated 28-06-2018 therefore the action of Ld. CIT(A) in passing the impugned order is highly unjustified and without following the principles of natural justice.
6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of Rs. 12,18,000/- made by Ld. AO on account of cash deposit in bank account by treating it as alleged income of assessee that too by recording incorrect facts and findings and without considering the submissions and evidences of assessee and without observing principle of natural justice.

7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B and 234C of the Income Tax Act, 1961.
8. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

2. 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.

3. During the hearing, Ld. counsel for the assessee has stated that lower authorities have erred in law and on facts in passing the ex-parte orders and that too without providing adequate opportunity of being heard and without observing the principle of natural justice. It was further submitted that Ld. CIT(A) has also erred in law and on facts in not quashing the impugned reassessment order passed by AO u/s 144/147 and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961. It was further submitted that Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO and that too without serving mandatory notice u/s 148, 142(1) and show cause notice u/s 144 of the Act and without giving proper opportunity of being heard. It was further submitted that Ld. CIT(A) has not considered the submissions of assessee submitted via

registered post on dated 28-06-2018 therefore the action of Ld. CIT(A) in passing the impugned order is highly unjustified and without following the principles of natural justice. It was further submitted that Ld. CIT(A) has also erred in law and on facts in not deleting the addition of Rs. 12,18,000/- made by Ld. AO on account of cash deposit in bank account by treating it as alleged income of assessee that too by recording incorrect facts and findings and without considering the submissions and evidences of assessee and without observing principle of natural justice. In support of these contentions, assessee has filed a Paper Book containing pages 1-45 which were also filed before the authorities below, but they have not consider the same. However, he has again attached the documents in the shape of aforesaid paper in which he has attached the copy of reasons recorded dated 10.3.2017 to reopen the case u/s. 147 of the Act; copy of notice u/s. 142(1) dated 1.9.2017 sent at address on H.No. 598, Village Badhwari, PO Khaderpur, Gurgaon; copy of show cause notice dated 18.8.2017 sent at address on H.No. 598, Vill. Badhwari, PO Khaderpur, Gurgaon; copy of notice u/s. 142(1) dated 15.3.2017 sent at address on H.No. 598, Vill. Badhwari, PO Khaderpur, Gurgaon; Copy of NMS Report of assessee showing the address of assessee H.No. 593 Harvir S/o Raja Ram, Village Bandhwali, Gurgaon-122001; Copy of Form 26AS for the relevant assessment year showing the correct address of assessee. H.No. 593 Harvir S/o Raja Ram, Vill Bandhwali, Gurgaon-122001; copy of ITR Acknowledgement of assessee for AY 2014-15, 2015-16 and 2016-17 showing that assessee was regularly filing his return of income at his correct address; copy of show cause notice dated

1.9.2017 sent at address on sent at address on H.No. 598, Vill. Badhwari, PO Khaderpur, Gurgaon; copy of computation of income of assessee for impugned assessment year showing the gross total income of assessee is less than basic exemption limit; copy of affidavit of assessee dated 26.6.2018 deposing his correct address and his income for impugned assessment year from running of trucks only; copy of bank statement of assessee of PNB bank for the impugned assessment year for account no. 3078000100007292; copy of bank statement of assessee for the impugned assessment year for account no. 4943002100000186; copy of written submissions filed before Ld. CIT(A); copy of letter dated 28.6.2018 sent to Ld. CIT(A) submitting written submission and paper book and copy of letter dated 24.7.2018 sent to Ld. CIT(A) requesting to let us know the next date of hearing, but these documents/evidences were not considered by the lower authorities properly. Therefore, he requested that the issues in dispute may be remitted back to the Ld. CIT(A) to decide the same afresh, as per law after giving adequate opportunity of being heard to the assessee and consider all the documents/evidences of the assessee.

4. On the other hand, Ld. DR relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has given various opportunities to the assessee, but the assessee remained non-cooperative and as a result thereof, the Ld. CIT(A) has no option but to dismiss the appeal of the assessee. But he has no objection for setting aside the issues in dispute to the file of the Ld. CIT(A) for deciding the same afresh, subject to the

condition that if this Bench directed the assessee through his counsel to appear before the Ld. CIT(A) to substantiate its claim on the fixed date and Ld. CIT(A) will not issue any notice to the assessee.

5. I have heard both the parties and perused the records as well as the relevant provisions of law, I am of the view that there is no doubt that assessee remained non-cooperative before the Ld. CIT(A) and the Ld. CIT(A) has passed the exparte order, without discussing in detail the facts and circumstance of the case and also did not deal the issue on merit and passed a non-speaking order, which in my opinion, is not in accordance with the principles of natural justice and it is an erroneous approach. After reading Section 250(6) of the Act, I am also of the considered view that Assessee's case should be decided on merits, which the Ld. CIT(A) has not done. However, it is a settled law that even an administrative order has to be speaking one. In this regard, I draw support from Hon'ble Apex Court in the case M/s Sahara India (Farms) Vs. CIT & Anr. in [2008] 300 ITR 403 wherein it has been held that even "an administrative order has to be consistent with the rules of natural justice".

5.1 In the background of the aforesaid discussions and in the interest of justice as well as agreed by both the parties, I remit back the issues in dispute to the files of the Ld. Commissioner of Income Tax (Appeals) for hearing on **25.06.2019 at 10.00 AM** with the directions to consider each and every aspects of the issues involved in the Appeal and decide the same afresh, after considering all the evidences/documents and pass

a speaking order. It is made clear that no notice for hearing will be issued by the Ld. CIT(A). Assessee is also directed through his Counsel to appear before the Ld. CIT(A) on **25.06.2019 at 10.00 AM** for hearing to substantiate his case and file all the necessary documents before him and did not take any unnecessary adjournment in the case.

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

Order pronounced on 25/03/2019.

SD/-

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

*Date 25/03/2019*

**"SRBHATNAGAR"**

**Copy forwarded to: -**

1. Appellant -
  2. Respondent -
  3. CIT
  4. CIT (A)
  5. DR, ITAT
- TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches