

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA NO. 8271/DEL/2018
Asstt. Year : 2014-15

AXIS RISK CONSULTING SERVICES
PVT. LTD.
GENPACT TOWER,
DLF PHASE-V, SECTOR-53,
GURGAON
HARYANA
(PAN: AAECA9833G)

(Applicant)

Vs. ADDL. CIT, SPL. RANGE-1
ROOM NO. 159A,
C.R. BUILDING,
NEW DELHI - 2

(Respondent)

Applicant by : Sh. Trandeep Singh, Adv.
Respondent by : Ms. Ashima Neb, 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 26.10.2018 passed by the Ld. CIT(A)-32, New Delhi pertaining to assessment year 2014-15.

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

1. That on the facts and in law the orders passed by both the CIT(A) and the AO are bad in law and void ab initio.
 - 1.1 That on facts and in law the CIT(A) has erred in not granting a proper opportunity of being heard.
2. Without prejudice, that on facts and in law the CIT(A) has erred in not adjudicating upon the issues in dispute i.e. the Grounds of appeals raised by the appellant in Form no. 35.
3. That on facts and in law the AO/CIT(A) have erred in making / upholding disallowance of Share Based Compensation Cost of Rs. 56,44,000/-.
4. That on facts and in law the AO/CIT(A) have erred in making / upholding disallowance of

Proportionate Total Interest Cost of Rs.
17,33,360/-.

5. That on facts and in law the AO/CIT(A) have erred in making / upholding disallowance of expenditure of Rs. 42,83,298/- incurred by the appellant as fee paid to M/s Ztek Consulting Inc by invoking provisions of section 40(a)(i) of the Act.

That the appellant prays for the leave to add, alter, amend and / or vary the grounds of appeal at or before the time of hearing.

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

4. Ld. counsel for the assessee has submitted that Ld. CIT(A) has passed the exparte and non-speaking order, without discussing the merit of the case. Hence, he requested that this matter may be set aside to the file of the Ld. CIT(A) for fresh adjudication and decide on merits and pass a speaking order, after giving adequate opportunity of being heard to the assessee.

5. On the other hand, Ld. DR relied upon the orders of the authorities below 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 she has objection for setting aside the issues in dispute to the file of the Ld. CIT(A) for deciding the same afresh.

5. We have heard both the parties and perused the records as well as the relevant provisions of law, we are of the view that there is no doubt that assessee remained non-cooperative before the Ld. CIT(A). We further find that Ld. CIT(A) has passed the ex parte 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 our 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, we are 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, we 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, we remit back the issues in dispute to the files of the Ld. Commissioner of Income Tax (Appeals) for hearing on 09.05.2019 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 on the merits of the case and give adequate opportunity of being heard to the assessee. The Assessee through his counsel is also directed to appear before the Ld. CIT(A) on 09.05.2019 for hearing and file all necessary evidences / documents to substantiate his case and did not take any unnecessary adjournment in the case before the Ld. CIT(A). Since the date of hearing before the Ld. CIT(A) has been intimated in the Open Court, there is no need to send the notices to the assessee by the Ld. CIT(A).

6. 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 01-04-2019.

Sd/-
[L.P. SAHU]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 01/04/2019

SRBHATNAGAR

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT,
Delhi Benches

