

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

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 158/Del/2019
Assessment Year: 2013-14

SEASHELL HOUSING LTD.
D-6, DHAWANDEEP BUILDING,
JANTAR MANTAR ROAD,
NEW DELHI - 110 001
(PAN: AAKCS8878H)
(ASSESSEE)

vs. ITO, WARD 23(2),
NEW DELHI

(RESPONDENT)

Assessee by: Ms. Kavya Tiwari, Adv.
Revenue by: Sh. SL Anuragi, Sr. DR.

ORDER

This appeal is filed by assessee against the Order dated 11.9.2018 passed by the Ld. CIT(A-8), New Delhi relating to Assessment Year 2013-14 on the following grounds:-

- i) That on the facts and circumstances of the case, the order dated 11.9.2018 passed by the Ld. CIT(A) is without judicious appreciation of the facts and position in law, and thus, erroneous insofar as the same upholds the order dated 14.3.2016 passed by the AO.
- ii) That the Ld. CIT(A) was not justified in law and facts, by not adjudicating the issue, instead dismissing in hassled manner, without providing a proper opportunity to the appellant.
- iii) That the Ld. CIT(A) was not justified by not appreciating the facts available on record i.e. statement of facts, grounds of appeal and passed an order without considering the same.

- iv) That the Ld. CIT(A) erred on facts and in law in confirming the addition of Rs. 20 lacs under section 68 of the Act made by the AO treating it as the unexplained income of the appellant in arbitrary manner.

That the appellant seeks leave to add, alter, amend or withdraw any ground of appeal before or at the time of hearing of this appeal.

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 filed an application dated 20.3.2019 stating therein that the assessee could not attend the hearing before the Ld. CIT(A) due to change of communication address as the notices were sent to the earlier address. It was further submitted by her that by inadvertent mistake the newly changed address was not communicated to the Ld. CIT(A), as a result, thereof the Ld. First Appellate Authority has passed the ex parte and non-speaking order. Hence, she 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.

4. 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 he has no objection for setting aside the issues in dispute to the file of the Ld. CIT(A) for deciding the same afresh.

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) by not communicating the new address. I further find that 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, I remit back the issues in dispute to the files of the Ld. Commissioner of Income Tax (Appeals) for hearing 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. . Assessee is also to file all necessary evidences / documents to substantiate his case and did not take any unnecessary adjournment in the case before the Ld. CIT(A).

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

Order pronounced on 01/04/2019.

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

Date 01/04/2019

"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