

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

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

I.T.A. No. 6029/Del/2018  
Assessment Year: 2010-11

UNIALMAZ,  
SHOP NO. 31, (FF),  
MGF METROPOLITAN MALL,  
SAKET,  
NEW DELHI - 110 017  
(PAN: AAAFU7754M)  
**(ASSESSEE)**

vs. ACIT, CIRCLE 32(1),  
NEW DELHI  
13<sup>TH</sup> FLOOR, CIVIC CENTRE  
NEW DELHI - 110 017

**(RESPONDENT)**

**Assessee by:** Sh. Lalit Mohan, CA  
**Revenue by:** Sh. SL Anuragi, Sr. DR.

**ORDER**

This appeal is filed by assessee against the Order dated 13.7.2018 passed by the Ld. CIT(A)-11, New Delhi relating to Assessment Year 2010-11 on the following grounds:-

1. On the Facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming order made under 143(3) r.w.s. 147 of Income Tax Act by the Ld, A.O which is illegal bad in law and ultra virus.
2. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the validity of initiating proceedings U/s 147 of the Act by issuing notice U/s 148 of the Act more so when statutory conditions prescribed U/s 147 to 152 were not complied with.

3. That having regard to the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in confirming the action of A.O in making addition /disallowing of Rs.12,68,713/- on account of alleged bogus purchases.
4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in rejecting the claim of the appellant without allowing reasonable opportunity of the hearing in violation of principles of natural justice.
5. The Ld. CIT(A) failed to appreciate that the Ld. A.O. had neither provided copy of materials and statement relied upon by him (though A.O has recorded incorrect fact of providing of copy of statement)nor allowed any opportunity to the appellant to cross examine those parties who have been alleged to have provided the accommodation entry of such purchases and therefore the order is liable to be annulled.
6. The appellant craves leave to amend, or alter any ground(s) or add new ground(s) which may be necessary either before or during the course of hearing of the appeal.

The appellant prays that the disallowance on account of alleged bogus purchases confirmed by the Ld CIT(A) to the extent of Rs.12,68,713/- may kindly be deleted.

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 Ld. CIT(A) has erred in law and on facts in passing the ex-parte order and that too without providing adequate opportunity of being heard and without observing the principle of natural justice and not passed a speaking order. Therefore, he requested that the issues in dispute may be remitted back to the file of the Ld. CIT(A) to decide the same afresh, as per law after giving adequate opportunity of being heard to the assessee and with the directions to consider all the documents/evidences filed by 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 properly 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 **26.06.2019 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 **26.06.2019 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 03/04/2019.

**Sd/-**

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

*Date 03/04/2019*

**"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