

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**(DELHI BENCH 'SMC' : NEW DELHI)**  
**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

**ITA No. 6010/Del/2018**  
**Assessment Year: 2010-11**

JAG ROSHAN,  
C/O PREM RAJPAL, ADV.  
NEAR ELITE CINEMA,  
RAILWAY ROAD,  
HISAR,  
HARYANA  
**(PAN: ASKPR2556C)**  
**(APPELLANT)**

VS. ITO, WARD-5,  
HISAR

**(RESPONDENT)**

Assessee by : Sh. V. Raja Kumar, Adv. &  
Sh. Pulak Raj Pal, Advocate

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

**ORDER**

The Assessee has filed the Appeal against the Order dated 29.6.2018 of the Ld. CIT(A)-2, Gurgaon pertaining to assessment year 2010-11. The assessee has raised as many as five grounds, but he has argued only ground no. (iv) which read as under:-

“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming following action of the Assessing Officer in:-

(iv) making an addition of Rs. 3,80,000/- on account of agriculture income treated as income from other sources.”

2. The facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

3. At the time of hearing, Ld. Counsel for the assessee stated addition made amounting to Rs. 3,80,000/- on account of agriculture income treated as income from other sources is illegal in the eyes of law. He further submitted that no section has been mentioned in the order under which such addition has been made. However, the proof regarding agriculture income have already been submitted before the AO, despite that addition was made and confirmed illegally in the eyes of law. He further submitted that Ld. CIT(A) has affirmed the action of the AO only on the basis that assessee did not produce the affidavit before the AO during the assessment proceedings, which is not tenable. In view of above, he requested to set aside the issue in dispute to the file of the AO for fresh consideration and an opportunity of being heard to be given to the assessee with the liberty to file other documents / evidences to substantiate its case.

4. On the contrary, Ld. DR relied upon the order of the authorities below.

5. I have heard both the parties and perused the records especially the orders of the revenue authorities. I find that Ld.

CIT(A) at page no. 3-4 of the impugned order vide para no. 6 has observed as under:-

*“It is seen that the appellant has produced an affidavit from Shri Shivnarain, to explain that the agricultural income shown was true and correct. However, the appellant did not produce this affidavit before the Assessing Officer during assessment proceedings. Therefore, it cannot be accepted at this juncture. It was onus of the appellant to prove the source of the cash deposit before the Assessing Officer, which he has failed to do. Therefore, in my opinion the addition made by the AO is justified. The appeal therefore, is dismissed.”*

5.1 After perusing the aforesaid findings of the Ld. CIT(A), there is no doubt that during the appellate proceedings the assessee has produced an affidavit from Shri Shivnarain, to explain that the agricultural income shown was true and correct, however, the assessee did not produce this affidavit before the AO. Hence, Ld. CIT(A) did not accept this affidavit and went against the assessee. But I find that Ld. CIT(A) 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".

6. In the background of the aforesaid discussions and in the interest of justice, I remit back the issues in dispute to the files of Assessing Officer to decide the same afresh, after considering the affidavit of Sh. Shivnarain and verify the veracity thereof and then decide the issues in dispute afresh and give adequate opportunity of being heard to the assessee.

7. In the result, Assessee's appeal is allowed for statistical purposes.

Order pronounced on 23-04-2019.

Sd/-

**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

**Dated :23-04-2019**

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.