

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**I.T.A .No.-6027/Del/2018
(ASSESSMENT YEAR-2010-11)**

Daljit Singh S/o Sh. Darshan Singh Village Bir Amin Distt. Kurukshetra, Haryana. PAN No. CPTPS7432C (APPELLANT)	Vs.	Income Tax Officer, Kurukshetra, Haryana. (RESPONDENT)
Appellant by	Shri Mohit Jhamb, Adv.	
Respondent by	Shri S.L. Anuragi, Sr. DR	

ORDER

This appeal filed by the Assessee is directed against the order dated 27.06.2018 of the Ld. CIT(Appeals)-Karnal relevant to assessment year 2010-11 on the following grounds of appeal: -

1. *“That the Ld.CIT(Appeals) Karnal, is against law and facts on the file in as much as he was not justified in upholding the action of the Ld. Assessing Officer in resorting to provisions u/s 147 of the Income Tax Act, 1961 in the case of Appellant who is agriculturist.*
2. *That the Ld. CIT(Appeals) is not justified in upholding the addition of Rs. 2,50,000/- made the Ld. Assessing Officer in the case of Appellant.*
3. *That any other ground of appeal which may be advanced at the time of hearing of the 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 convenience.

3. Ld. Counsel of the assessee stated that Ld. CIT(A) has not adjudicated the ground no. 1 and 2 raised before him on the legal issue and only decided the ground no. 3 on the merits of the case, which is not sustainable in the eyes of law and against the principle of natural justice. In this regard, he draw my attention towards Form No. 35 wherein he raised the ground 1 & 2 before the Ld. CIT(A). Hence, he requested that the Ld. CIT(A) may be directed to first decide the ground no. 1 & 2 raised which are in legal in nature, which he has not adjudicated, 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. But he could not controvert the contention raised by the Ld. Counsel for the assessee for not deciding the ground no. 1 & 2 by the Ld. CIT(A) raised before him.

5. After hearing both the parties and perusing the impugned order, I find considerable cogency in the contention of the Ld. Counsel for the assessee that Ld. CIT(A) has not adjudicated the ground no. 1 and 2 raised before him on the legal issue and only decided the ground no. 3 on the merits of the case. For the sake of convenience, I am reproducing

hereunder the ground no. 1 & 2 raised before the Ld. CIT(A) vide Form No. 35 as under:-

1. That the Ld. AO has erred in the facts and circumstances of the case and in law in wrongly assuming jurisdiction u/s 147 of the Income Tax Act, 1961.
2. That on the facts and circumstances of the case and in law, the proceedings u/s. 147 are bad in law since no notice u/s. 148 has been served upon on the appellant.

5.1 However, the Ld. CIT(A) has adjudicated the issue in dispute vide par ano. 2.2 at page no. 2 to 3 of the impugned order which read as under:-

"2.2. Findings:-

A perusal of the facts of the case the submission of the assessee and the material on record have been considered. The assessment order clearly indicates that the assessee filed his return of income pursuant to the receipt of notice issued u/s. 148 of the I.T. Act, 1961. The AR of the assessee attended the assessment proceedings in response to notice issued u/s. 143(3) of the I.T. Act, 1961. No objections to the fact

mentioned by the assessee that the notices were not received were made at the time of assessment proceedings. Therefore, the issue of non-receipt of notices is clearly an afterthought. Moreover, the AO clearly mentions the reasons for making the said addition as no documentary evidence was submitted by the assessee in support of expenses incurred in arriving at the figure shown as agricultural income in his in his ITR. In my opinion, the disallowance is justified and I confirm the same."

5.2 After perusing the aforesaid finding of the Ld. CIT(A), I find that Ld. CIT(A) has not adjudicated the ground no. 1 & 2 raised before him, which are also reproduced as aforesaid under para 5 of this order, which is not sustainable in the eyes of law and against the principle of natural justice. However, it is a settled law that even an administrative order has to be speaking one.

5.3 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 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 respectfully following the precedent, as aforesaid, I set aside the order of the Ld. CIT(A) and directed him to first decide the ground no. 1 & 2 raised before him by the assessee which are legal in nature and then decide the issues involved in the present appeal, afresh, after giving adequate opportunity of being heard to the assessee. However, the Assessee is directed to file all the evidences/documents etc. before the Ld. CIT(A) to substantiate his case. Assessee is also directed not to take any unnecessary adjournment in the proceedings.

7. In the result, the Appeal filed by the Assessee stands allowed for statistical purpose.

Order pronounced on 24/04/2019.

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

Dated:24/04/2019

SR BHATNAGAR

Copy forwarded to: -

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

By Order,

ASSISTANT REGISTRAR