

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**I.T.A .No.-8210/Del/2018
(ASSESSMENT YEAR-2009-10)**

BUDHNESH KUMAR, VILLAGE AGROLA, LONI, GHAZIABAD UTTAR PRADESH - 201102 (PAN: ASRPK2149K) (APPELLANT)	vs	ITO, WARD 5(1), GHAZIABAD UTTAR PRADESH (RESPONDENT)
Appellant by		Sh. Pratap Gupta, CA
Respondent by		Shri S.L. Anuragi, Sr. DR

ORDER

This appeal filed by the Assessee is directed against the order dated 07.09.2018 of the Ld. CIT(Appeals), Ghaziabad relevant to assessment year 2009-10 on the following grounds of appeal: -

- 1) That Ld. CIT(A) without appreciating the correct facts of the case and giving proper opportunity of being heard is not justified in law and facts and circumstances of the case in dismissing the appeal filed by appellant as non set being defective due to appeal filed by the appellant allegedly late by more than 8 months ignoring the date of service on 2.5.2017 mentioned in column no. 2(c) of appeal form no. 35 and appeal was filed within the stipulated period of 30 days from the date of service of order.
- 2) That Ld. CIT(A) without appreciating the correct fact of the case and giving proper opportunity of being heard is not justified in law and facts of the circumstances of the

case is not justified in not deciding the appeal of the appellant on the merits of the case which is against the principle of natural justice and order of CIT(A) needs to be set aside.

- 3) With prejudice to ground no. 1 and 2, AO is not justified in law and facts and circumstances of the case in reopening of assessment under section 147 of the Income Tax Act, 1961 without complying with the provision of section 147 to 151 of the Income Tax Act. (This is legal ground being taken for the first time before Hon'ble ITAT).
- 4) That order passed under section 144 of the I.T. Act without serving the notice under section 148 and other statutory notices is bad in law and should be quashed.
- 5) Without prejudice to the above grounds of appeal taken, the AO without appreciating the correct facts of the case and giving proper opportunity of being heard and complying with the provision of section 144 is not justified in law and facts and circumstances of the case in making the addition of Rs. 2268000/- under section 69 of the Income Tax Act, 1961 and ignoring the return of income filed and thus order so passed needs to be set aside.
- 6) Appellant has every right to make, add, delete, modify, or alter any grounds of appeal at the time of hearing.

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) as well as AO have not given proper opportunity to assessee to present his case and passed the exparte orders, which is against the principle of natural justice. It was further submitted that Ld. CIT(A)

without appreciating the correct facts of the case dismissed the appeal filed by assessee as non-set being defective due to appeal filed by the appellant allegedly late by more than 8 months ignoring the date of service on 2.5.2017 mentioned in column no. 2(c) of appeal form no. 35 and appeal was filed within the stipulated period of 30 days from the date of service of order. Hence, he requested that the issues in dispute may be set aside to the file of the Ld. CIT(A) to decide the same afresh, 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 not objected the request of the Id. counsel for the assessee.

5. After hearing both the parties and perusing the impugned order, I find that both the lower authorities i.e. AO as well as Ld. CIT(A) have passed the exparte order. I find considerable cogency in the contention of the Ld. Counsel of the assessee that Ld. CIT(A) without appreciating the correct facts of the case has dismissed the appeal filed by assessee as non-set being defective due to appeal filed by the assessee allegedly late by more than 8 months ignoring the date of service on 02.5.2017 mentioned in column no. 2(c) of appeal Form no. 35, which reveals that the appeal was filed within the stipulated period of 30 days from the date of service of order. Hence, in my considered view, the issues in dispute needs to be set aside to the file of the Ld. CIT(A) to decide the same afresh on merits, after giving adequate opportunity of being heard to the, keeping in mind the facts and circumstances of the case, as discussed above in this para.

5.1 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 remit back the issues in dispute to the files of the Ld. Commissioner of Income Tax (Appeals) to consider each and every aspects of the issues involved in the Appeal and decide the same afresh and pass a speaking order by consider all the evidences/documents, keeping in view of the aforesaid facts and circumstances of the case as discussed in para 5 above. Needless to add that the assessee should be given adequate opportunity of being heard. However, the Assessee is directed to file all the evidences/documents etc. before him 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 15/05/2019.

Sd/-

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

Dated: 15/05/2019

SR BHATNAGAR

Copy forwarded to: -

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

By Order,

ASSISTANT REGISTRAR

