

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

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. Nos. 8281 & 8282/Del/2018
Assessment Year: 2009-10

Brahamadatta Sharma,
B-1/25, Ground Floor,
Yamuna Vihar,
Delhi – 53
(PAN: GXFPS5128F)
(ASSESSEE)

vs. ITO, WARD 1(5),
New Delhi

(RESPONDENT)

Assessee by: Sh. Sameer Kapoor, CA
Revenue by: Sh. SL Anuragi, Sr. DR.

ORDER

These appeals are filed by assessee against the Orders dated 15.11.2018 and 31.10.2018 passed by the Ld. CIT(A), Ghaziabad relating to Assessment Year 2009-10. The ITA No. 8281/Del/2018 pertains to quantum addition and ITA No. 8282/Del/2018 pertains to penalty u/s. 271(1)(c) of the I.T. Act, 1961, hence, both are inter-connected and accordingly were heard together and are being disposed of by this common order for the sake of convenience, by dealing with ITA No. 8281/Del/2018 and the decision thereof will apply *mutatis mutandis* to other Appeal No. 8282/Del/2018.

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 lower authorities have erred in law and on facts in passing the ex-parte orders and that too without providing adequate opportunity of being heard and without observing the principle of natural justice. In support of these contentions, assessee has filed a Paper Book containing pages 1-13 in which he has attached the affidavit by authorised representative CA Pramod Singahal; PAN of the assessee; copy of letter to AO requesting copy of assessment order dated 12.5.2017; copy of letter to AO requesting copy of penalty order dated 01.5.2017; copies of medical certificate; copies of Form No. 35 for appeal filed before Ld. CIT(A) against the assessment order; copies of Form No. 35 for appeal filed before Ld. CIT(A) against the order u/s. 271(1)(c) and stated that the same were filed before the lower authorities, but were not considered by them. Therefore, he requested that the issues in dispute may be remitted back to the file of the AO to decide the same afresh, as per law after giving adequate opportunity of being heard to the assessee and consider all the documents/evidences of 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 AO 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 lower authorities and therefore, Ld. CIT(A) has passed the ex parte 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 as well as agreed by both the parties, I remit back the issues in dispute to the files of the Assessing Officer with the directions to consider each and every aspects of the issues involved in the Appeal and decide the same afresh, after considering the Paper Book which is containing pages 1-13 i.e. copy of the the affidavit by authorised representative CA Pramod Singahal; PAN of the assessee; copy of letter to AO requesting copy of assessment order dated 12.5.2017; copy of letter to AO requesting copy of penalty order dated 01.5.2017; copies of

medical certificate; copies of Form No. 35 for appeal filed before Ld. CIT(A) against the assessment order; copies of Form No. 35 for appeal filed before Ld. CIT(A) against the order u/s. 271(1)(c) and give adequate opportunity of being heard to the assessee. Assessee is also directed to cooperate with the AO in the proceedings and did not take any unnecessary adjournment and file any other evidences / documents before him to substantiate his case.

6. In the result, both the appeals filed by the assessee stand allowed for statistical purposes.

Order pronounced on 22/05/2019.

Sd/-

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

Date 22/05/2019

"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