

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA.No.5873/Del./2016
Assessment Year 2012-2013

Director (Finance), Delhi Transco Ltd., Shakti Sadan, Kotla Road, New Delhi – 110 002. PAN AABCD6342A	vs.,	The DCIT, Circle – 7 (1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Sr. Advocate
For Revenue :	Ms. Ashima Neb, Sr.DR

Date of Hearing :	23.05.2019
Date of Pronouncement :	03.06.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-37, New Delhi, Dated 16.09.2016, for the A.Y. 2012-2013.

2. We have heard the Learned Representatives of both the parties.

3. In this case, A.O. passed the assessment order under section 143(3) Dated 23.03.2015 whereby certain additions were made to the income of the assessee. The assessee challenged the assessment order before the Ld. CIT(A). The Ld. CIT(A) noted that notice dated 21.07.2016 was issued for hearing of the appeal on 27.07.2016. On this date, request was received for adjournment which was granted. Another notice was issued on 08.08.2016 fixed in the matter for 31.8.2016. On this date also, on the request of assessee, matter was adjourned to 13.09.2016. The Ld. CIT(A) noted that since 13.09.2016 was declared holiday, therefore, notice dated 07.09.2016 was issued re-scheduling the date of hearing on 14.09.2016. On 14.09.2016 none appeared on behalf of the assessee. Therefore, appeal was decided ex-parte and same was dismissed vide impugned order.

4. Learned Counsel for the Assessee submitted that on two occasions on 27.07.2016 and 31.08.2016 request was made on behalf of the assessee for adjournment because similar matter for other years were also fixed.

Finally appeal was adjourned on 13.09.2016. Since, it was a declared holiday, therefore, assessee waited for fresh notice. In the mean time, Ld. CIT(A) sent notice dated 07.09.2016 re-scheduling date of hearing to 14.09.2016. Since, 10th and 11.09.2016 were Saturday and Sunday and 13.09.2016 was declared holiday, therefore, only working day was left on 12.09.2016. On the evening of 15.09.2016, notice dated 07.09.2016 was received for hearing fixing the date of hearing on 14.09.2016. The Ld. CIT(A) passed the order on 16.09.2016 ignoring the fact that assessee made request for adjournment because of non-availability of the Tax Consultant being outside town. Learned Counsel for the Assessee, therefore, submitted that Ld. CIT(A) passed the order without giving proper opportunity of being heard to the assessee and that impugned order is passed in violation of principles of natural justice. Therefore, matter may be remanded to the file of Ld. CIT(A) for passing the order afresh, after giving opportunity of being heard to the assessee.

5. On the other hand, Ld. D.R. relied upon the Orders of the Ld. CIT(A) and contended that Ld. CIT(A) given three opportunities to the assessee for hearing of the appeal which were not availed to by the assessee. Therefore, ex-parte order is justified.

6. We have considered the rival submissions. The facts noted regarding hearing of the appeal are not in dispute that appeal was fixed for 27.07.2016 and 31.08.2016 and on that date the matter was adjourned on the request of assessee because other years appeals were also pending. Thus, there was no delay on the part of assessee for disposal of the appeal. The appeal was ultimately fixed on 13.09.2016 which were declared holiday. Therefore, Ld. CIT(A) re-scheduled the hearing of the appeal to 14.09.2016 and sent the notice on 07.09.2016. The assessee contended that 10th and 11th were closed holidays and 13.09.2016 was declared holiday, therefore, only working day was left was 12.09.2016 and on the evening of 15.09.2016, notice dated 07.09.2016 was received for hearing of the appeal on 14.09.2016. These facts clearly

show that no reasonable opportunity of being heard was granted to the assessee for hearing of the appeal. The contention of the assessee shows that notice for 14.09.2016 was received after hearing was over. Even though it would have received earlier, there was no occasion for assessee to comply with the same because the Tax Consultant of assessee was out of Town. These facts clearly show that delay is not attributable on the part of assessee and that the appellate order have been passed without giving reasonable opportunity of being heard to the assessee. Therefore, impugned order is passed in violation of principles of natural justice. We, therefore, without deciding the appeal of assessee, set aside the impugned order and restore the appeal of assessee to the file of Ld. CIT(A) with a direction to re-decide the appeal of assessee on merits, as per law, by giving reasonable, sufficient opportunity of being heard to the assessee.

7. In the result, appeal of Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 03rd June, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "B" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.