

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH '1-2' NEW DELHI**

**BEFORE SHRI O.P.KANT, ACCOUNTANT MEMBER  
AND  
SHRI K. NARSIMHA CHARY, JUDICIAL MEMBER**

**I.T.A.No.1093/Del/2016  
Assessment Year: 2010-11**

**NGK Spark Plugs P. Ltd., vs  
212, 2<sup>nd</sup> Floor,  
JMD Pacific Square,  
32<sup>nd</sup> Mile Stone, NH-8,  
Gurgaon.  
PAN AACCN3410E**

**Dy. Commissioner of Income-tax,  
Circle-3(1), Gurgaon.**

**(Appellant)**

**(Respondent)**

**Appellant by: Shri Divyanshu Agarwal, Advocate  
Shri Akash Garg, Advocate  
Respondent by: Shri Sarabjeet Singh, Sr.DR.**

**Date of hearing: 04/07/2019  
Date of order : 09/07/2019**

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

Aggrieved by the order dated 22.12.2015 passed by the learned Commissioner of Income Tax (Appeals)-2, Gurgaon ("Ld. CIT(A)"), the assessee, namely M/s NGK Spark Plugs Private Limited filed this appeal in respect of Assessment Year 2010-11.

2. Brief facts of the case are that the assessee company is engaged in trading and manufacturing of Spark Plugs and Auto Sensors. For the Asstt. Year 2010-11, they have filed a return at a loss of Rs.4,59,63,063/- (deemed total loss u/s 115JB

Rs.3,58,41,221/-) on 25.9.2010. Ld. AO found that the assessee had entered into international transactions with its associated enterprises and, therefore, made a reference to the TPO to determine the Arm's length price. Learned TPO, after considering the contentions of the assessee and perusing the record proposed an adjustment of Rs.5,72,79,605/- to the income of the assessee vide order dated 20.1.2014. Basing on that, learned AO made an addition of Rs.5,72,79,605/- and assessed the income at Rs.1,13,16,542/-.

3. Challenging the addition, assessee preferred an appeal before the ld. CIT(A). Learned CIT(A) recorded that the case was fixed for hearing on 27.8.2015 and at the request on behalf of the assessee, it was adjourned to 21.9.2015, 15.10.2015,20.10.2015 and finally to 14.12.2015, on which date none appeared. Therefore, looking at the absence of the assessee, ld. CIT(A) inferred that the assessee had no interest to pursue the matter or get the matter disposed of. By cursorily observing that the ld. TPO gave cogent reasons and detailed justification for the proposed adjustment and in the absence of any explanation from the assessee, there are no reasons to interfere.

4. Ld. AR submitted that the learned CIT(A) cannot dismiss the appeal in limine, without referring to the merits of the case and the so called reasons given by the ld. CIT(A) that the reasoning of the ld. TPO was detailed and justified is only a conclusion but not the process. He submitted that given an opportunity, the assessee is willing to cooperate with the disposal of the matter on merits since on the earlier occasions before the ld. CIT(A), there

was no representation on behalf of the assessee was not known to the assessee and, therefore, he will take all the diligent steps to make representation before the ld. CIT(A).

5. Ld. DR submitted that this is not a matter to be allowed and the orders of the authorities below are well reasoned and justified.

6. We have gone through the record and the impugned order. Neither the grounds of appeal are adverted to by the ld. CIT(A) nor such grounds were discussed in the order. Before the ld. CIT(A), the assessee had taken several grounds. Merely because there was no representation on behalf of the assessee, ld. CIT(A) is not prevented from discussing the case on merits and to reach a right conclusion. In these circumstances, we are of the considered opinion that this is a fit case to set aside the impugned order and remand the matter to the file of the CIT(A) for disposal afresh after giving opportunity to the assessee. Needless to say that it shall be the last opportunity for the assessee and should there be any default on its part to make representation, ld. CIT(A) is free to pass an ex parte order but on merits.

7. In the result, appeal of the assessee is allowed.

**Pronounced in open court on 9<sup>th</sup> July, 2019.**

**Sd/-**  
(O.P.KANT)  
ACCOUNTANT MEMBER

**sd/-**  
(K. NARASIMHA CHARY)  
JUDICIAL MEMBER

Dated: 9<sup>th</sup> July, 2019  
VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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