

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.3639/DEL/2016
Assessment Year: 2011-12**

**Mrs. Sunita Tripathi,
B-71, Pocket-2, Sector-82,
Noida.**

PAN: AENPT8467M

(Appellant)

vs

**Assessing Officer,
Ward 3(4), Noida.**

(Respondent)

**Assessee by: Shri Sameer Kapoor, CA
Department by: Ms Ashima Neb, Sr.DR**

**Date of Hearing: 13.8.2019
Date of Pronouncement: 20 .9.2019**

ORDER

PER NARASIMHA K. CHARY, JM

Challenging the order dated 31.3.2016 of the learned Commissioner of Income-tax (Appeals)-I, New Delhi {for short "Learned CIT(A)"} passed in Appeal No.160/2014-15, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a trade agent engaged in the sale of goods working for Anoopam India Private Ltd. For the Asstt. Year 2011-12, they have filed their return of income on 23.9.2011 showing an income of Rs.8,95,020/-. Learned AO, however, vide order dated 28.2.2014 passed u/s 143(3) of the Income-tax Act, 1961

("the Act") assessed the income of the assessee at Rs.22,92,360/- by making an addition of Rs.12,54,842/- on account of estimated profit by rejecting the books of accounts and a sum of Rs.1,42,500/- u/s 68 of the Act.

3. Aggrieved by the said addition, assessee preferred appeal before the learned CIT(A). Before the Id. CIT(A) on 1.2.2016, learned AR was asked to show cause why the income of the assessee be not enhanced and adjourned the matter on 9.2.2016 on which date looking at the absence of the assessee and his counsel, Id. CIT(A) drew an inference that the assessee had not considered it necessary to appear and defend the case but in view of the fact that the CIT(A) are assigned targets for disposing the appeals, no adjournment could be granted.

4. Learned CIT(A) observed that while maintaining the accounts on cash basis, the assessee had debited a sum of Rs.12,65,819/- as expenses payable and there was no explanation as to why such an amount of Rs.12,65,819/- which was not actually paid by the assessee during the relevant previous year should not be disallowed as the said amount was not admissible as expenditure, in view of the fact that the accounts of the assessee were maintained on cash basis. Id. CIT(A) determined the income of the assessee at Rs.35,58,251/-.

5. Aggrieved by such an order, assessee preferred this appeal stating that the Id. CIT(A) erred in law in sustaining the impugned addition of Rs.12,54,842/- on account of rejection of books of accounts and estimation of income by the AO in sustaining the impugned addition of Rs.1,42,500/- on account of unexplained unsecured loans from within

the family u/s 68 and enhancing the income by Rs.12,65,891/- on account of expenses payable as per accrual system when the AO recorded inconsistent finding regarding maintenance of accounts on cash basis and rejected the books of accounts.

6. It is the submission on behalf of the assessee that no notice u/s 251 of the Act has been issued by the Id. CIT(A) before proceeding to enhance the income and the refusal of the Id. CIT(A) to grant reasonable opportunity to the assessee amounts to violation of the principle of natural justice. It is prayed that the order of the Id. CIT(A) cannot be sustained for violation of principle of natural justice and, therefore, the assessment and enhancement thereof is to be quashed.

7. Per contra, it is the argument of the Id. DR that the Id. CIT(A) issued notice to the assessee and granted opportunity both for putting forth their case but the assessee failed to avail it and, therefore, the impugned order does not suffer any illegality or irregularity and need not be interfered with.

8. We have gone through the record. The impugned order does not indicate the issuance of any notice to the assessee before proposal to enhance the income of the assessee for tax purpose. Further, from 1.2.2016, the case was adjourned to 9.2.16 and since there was absence of the assessee and their counsel on 9.2.2016, Id. CIT(A) jumped to the conclusion that the assessee had no interest to defend the case and on that premise while declining to accept the request for adjournment, he concluded the proceedings. Impugned order speaks that the adjournment was sought on the ground of occupation of counsel.

Without adverting to the appeal before him, Id. CIT(A) dismissed the grounds of appeal before him in limine and further proceeded to enhance the income of the assessee without issuing any notice. Though the order speaks on 1.2.2016, Id. AR was asked to show cause why the income of the assessee shall not be enhanced, it appears from the record that within a period of 10 days, Id. CIT(A) concluded the appellate proceedings. It does not inspire confidence in our mind to hold that a reasonable opportunity was afforded to the assessee in this appeal by the Id. CIT(A) and there is violation of principle of natural justice in the disposal of appeal as well as enhancement of income. On this ground, we find it difficult to sustain the addition.

9. Having regard to this situation where the Id. CIT(A) failed to deal with the addition on merits and grant reasonable opportunity in respect of the enhancement of income, we deem it just and proper to set aside the impugned order and to remand the matter to the file of the Id. CIT(A) for disposal afresh following the procedure established under law. We accordingly set aside the issue and remand the matter to the file of the Id. CIT(A) to dispose it according to law after granting reasonable opportunity of being heard to the assessee.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Order Pronounced in the open court on 20th September, 2019.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

sd/-
(K.NARASIMHACHARY)
JUDICIAL MEMBER

Dated: 20th September, 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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