

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A. Nos. 3764 & 3765/DEL/2016
(Assessment Years – 2011-12 & 2012-13)**

Rastriya Sahara (Sahara India Mass Communication) C-2, C-3, C-4, Sahara India Complex, Sector – 11, Noida. (PAN : AAJFS 8722 L) (APPELLANT)	Vs	DCIT(TDS), Noida (RESPONDENT)
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Appellant by	Shri Gaurav Jain, Adv. Shri Divyam, C.A.
Respondent by	Shri G. Johnson, Sr. D.R.

Date of Hearing	07.01.2020
Date of Pronouncement	10.01.2020

ORDER

PER SUCHITRA KAMBLE, JM

These appeal are filed by the assessee against the order dated 31.03.2016 passed by the Commissioner of Income Tax [Appeals]-I, Noida under section 250 of the Income Tax Act, 1961 for Assessment Years 2011-12 & 2012-13.

2. The Grounds of appeal are identical in both the appeals the same are as under:-

1. *“That the ld CIT(A) has erred in law and on facts and circumstances of the case in confirming the order passed by the Dy. Commissioner of Income Tax, TDS, Noida, u/s 201(1) /201(1A) of the income tax Act.*
2. *That the ld. CIT(A) has erred in observing that the appellant has not responded to remand report o the Assessing Officer inspite of the fact that the same was never served on the correct address.*

3. *That the ld. CIT(A) has erred in law and on facts and circumstances of the case in passing appellate Order ex-parte without considering the submissions made by the appellant which were on record of the Ld CIT(A).*
4. *That in any view of the matter the ld. CIT(A) is not justified in confirming the order of the D* Commissioner of Income Tax, TDS, Noida without adjudicating and considering the submissions made by the appellant during the course of the appellate proceedings.*
5. *That the order passed is against the principles of audi alteram partem contrary to the principles natural justice and, therefore, void ab-initio and bad in law.*
6. *That the order passed by the ld. CIT(A) is without proper opportunity and bad in law.*
7. *That the order passed by the ld. CIT(A) is against the merits, circumstances and legal aspects of the case.*
8. *That the appellant craves leave to add, alter, amend or withdraw any or all the grounds of appeal on or before the date of hearing.”*

3. The assessee is engaged in the business of publication of newspaper. The major source of revenue of the assessee, publisher of newspaper is generated from advertisements published in its newspaper. The assessee is a member of the Indian Newspaper Society whose rules provide that the advertising agencies are free from control or interference from any business or person who owns or controls a newspaper, that newspaper agencies cannot be treated as principles and advertising agencies agents and prohibited members of the society from appointing advertising agency as their representative. The assessee gave trade discount of 15% to a accredited advertising agency. The discount was given in accordance with rules and regulations of the Indian Newspaper Society. The Assessing Officer was of opinion that trade discount given by the assessee was in the nature of commission or brokerage and assessee was liable to deduct tax at source on such payment to the advertising agency which assessee failed to establish. The Assessing Officer held that the assessee to be in default u/s 201(1) of the Income Tax Act, 1961 and,

therefore, raised a demand of Rs.34,17,903/- u/s 201(1) and Rs.14,35,519/- u/s 201(1A) of the Act for A.Y. 2011-12 and for A.Y. 2012-13 raised a demand of Rs.40,87,595/- u/s 201(1) and Rs.12,26,279/- u/s 201(1A) of the Act.

4. Being aggrieved by the assessment order, the assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal without giving any reasons or finding as to why demand of Rs.53,14,552/- and Rs.53,48,849/- for non deduction of Tax on amount allowable u/s 194H and also u/s 194J is sustainable.

5. The Ld. AR submitted that the CIT(A) has not at all considered any contentions raised by the assessee as well as after taking into account of remand report has not given any finding as to whether the additional evidence is admitted or not. The Ld. AR submitted that this order of the CIT(A) is non speaking and unreasoned order.

6. The Ld. DR relied upon the assessment order and submitted that since the assessee has not at all given any evidence before the Assessing Officer, the order of the Assessing Officer should be sustained.

7. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the CIT(A) has not at all commented on the merit of the case and without giving any cogent reason as to why the order of the Assessing Officer should be sustained, dismissed the appeal of the assessee. The order of the CIT(A) is non-speaking order, therefore, we are remanding back this issue contested in the present appeal in totality before the CIT(A) and direct the CIT(A) to give reasons and findings to the extent whether the claim of the assessee is sustainable or not, after taking into account the evidences produced by the assessee. Needless to say the assessee be given opportunity of hearing by following principle of natural justice.

8. In result, both the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the Open Court on 10th day of January, 2020.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 10/01/2020
*Priti Yadav, Sr. PS **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	07.01.2020
Date on which the typed draft is placed before the dictating Member	08.01.2020
Date on which the typed draft is placed before the Other Member	10.01.2020
Date on which the approved draft comes to the Sr. PS/PS	10.01.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	10.01.2020
Date on which the fair order comes back to the Sr. PS/PS	10.01.2020
Date on which the final order is uploaded on the website of ITAT	10.01.2020
Date on which the file goes to the Bench Clerk	10.01.2020
Date on which the file goes to the Head Clerk	