

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 2326/DEL/2019
[Assessment Year: 2010-11]

SH. NARESH CHAND,
R-64/C-2, H.NO. 37,
SECTOR-40, NOIDA
UTTAR PRADESH
(PAN: APVPC5557N)
[Appellant]

Vs. ACIT, CIRCLE -18(1),
NEW DELHI

[RESPONDENT]

Assessee by: Sh. Manu K. Giri, Adv.

Revenue by : Sh. Manoj Kumar Chopra, Sr. DR.

ORDER

This appeal is filed by the Assessee against the order of the Ld. Commissioner of Income Tax [Appeals]-1, New Delhi dated 28.09.2018 pertaining to assessment year 2010-11 on the following grounds:-

1. The Ld. CIT(A)-3 has not provided the proper opportunity to your petitioner. In his order dated 28.9.2018, letter for adjournment dated 25/7/2018 of other one Naresh Chand (Appeal No. 296/17-18/Noida has wrongly taken as filled by your petitioner (Appeal No. 466/E-file/2017-18/Noida).
2. Application dated 12.6.2018 for rectification u/s. 154 of the Income Tax Act is filed before the Assessing Officer, Ward 2(3), Sector-24, Noida and Ld. CIT(A) has not considered the facts of the case.
3. The Ld. CIT(A) in his order dated 28.9.2018 in point no. 16 that return of income of the applicant is not on the record either the Ld. AO or his office. The applicant has submitted the return of income to the AO and copy of the same is also filed before the Ld. CIT(A). The fact the return

income as well as deposited the tax and interest as per hard copy of return of income.

4. That the Ld. CIT(A) has wrongly taken the grounds that assessee has not complied with the provisions of Section 249(4)(b) of the Act whereas your petitioner has deposited the complete tax and interest as per the hard copy of return income filed before the AO as well as to Ld. CIT(A).

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 convenience.

3. At the time of hearing Ld. Counsel for the assessee stated that Ld. CIT(A) has decided the issues against the assessee without providing sufficient opportunity to the assessee. He further stated that assessee is having all the necessary evidences for substantiating the claim before the revenue authorities, if this Bench grants an opportunity to the assessee to do the same. He requested that AO has also completed the assessment u/s. 144/147 of the I.T. Act, 1961 and has not provided sufficient opportunity to the assessee for substantiating the claim. He requested that the issues in dispute may be set aside to the Assessing Officer to decide the same, afresh, as per law, after giving opportunity of hearing to the assessee as well as for production of all the necessary evidences for substantiating the claim of the assessee before the Assessing Officer. Ld. Counsel for the assessee stated that Ld. CIT(A) has passed some adverse remarks against Ms. Ashima Neb, Sr. DR/Addl. CIT of the Department and he has no objection, if these adverse remarks are expunged by the Bench, because the Ld. Counsel for the assessee has no objection and grievance against the said Officer.

4. Ld. DR has no objection on the request of the Ld. Counsel for the assessee.

5. I have heard both the parties and perused the orders passed by the revenue authorities especially the impugned order dated 28.9.2018, I find that Ld. CIT(A) has decided the issues in dispute against the assessee

without providing sufficient opportunity to the assessee as well as for production of the necessary evidences before him. Ld. Counsel for the assessee has also filed the paper book containing pages 1-106 in which he has attached the copy of letter dated 12.6.2018 u/s. 154 of the Act alongwith Annexure (A) Statement of income/ Annexure B Salary Certificate (Form 16)/ Annexure C ITR2 Return/ Annexure D Tax paid challans of Rs. 4,48,175/-/ Annexure E Tax paid challsn of Rs., 5,60,000/-(3)/ Annexure F cost of property details/ Annexure G Evidence of property purchase and payment; Annexure H Election card of whom property purchase; Annexure I Detail of investment u/s. 54F; Annexure K Letter of Tayal Associates as Legal Consultant; Annexure L SBI Bank pass bokk 26.3.2009 to 23.9.2010 and Canara Bank pass book 31.7.2008 to 29.8.2010 of assessee; copy of letter dated 11.12.2017 for stay against demand of Rs. 22,40,868/- with challan of Rs. 4,.48,175/- of the Income Tax Act; First notice dated 18.7.2018 issued by Ld. CIT for fixed the date of hearing on 31.8.2018; copy of letter dated 31.8.2018 filed before Ld. CIT with documents notice dated 11.9.2018 issued by Ld. CIT for fixed the date of hearing on 25.9.2018; copy of reply letter dated 25.9.2018 for adjournment; copy of letter dated 21.1.2019 for file inspection; copy of letter of application of other one Naresh Chand having appeal no. 296/17-18 filed on 25.7.2018. I am not commenting upon the merits of the case as well as on the documentary evidences. But, I am of the view that AO has also passed the assessment order u/s. 144/147 of the I.T. Act, 1961 without giving sufficient opportunity to the assessee for substantiating the claim. Similarly, the Ld. CIT(A) has also not given full opportunity of hearing and for producing the necessary evidences for substantiating the claim of the assessee. Therefore, in the interest of justice, I am setting aside the issues in dispute to the Assessing Officer for *denovo* proceedings, because the documentary evidences filed by the assessee in the shape of paper book mentioned above requires thorough examination at the level of the Assessing Officer. Needless to say that assessee should be granted adequate opportunity of being heard.

5.1 As regards some adverse remarks passed by the Ld. CIT(A) against Ms. Ashima Neb, Addl. CIT/ Sr. Departmental Representative. I have thoroughly gone the adverse remarks passed against the said Ld. DR and I am of the view that Ms. Ashima Neb, Sr. DR appeared many times before the undersigned in SMC Benches as well as Division Benches and found that she is very competent, knowledgeable and assisted the Bench as per her full ability and legal knowledge and also found her behaviour is excellent. Keeping in view her work and conduct and the assistance tendered by her, I never seen any negative or adverse thing against Ms. Ashima Neb, Addl. CIT/Sr. DR. I also failed to understand why Ld. CIT(A) has so much against her despite that she has not appeared and assisted him. Even otherwise, ITAT has not passed any adverse remarks against Ms. Ashima Neb, Sr. DR/ Addl. CIT.

5.2 Keeping in view of the facts and circumstances as explained above, the question of passing adverse remarks by the Ld. CIT(A) against Ms. Ashima Neb, Sr. DR/Addl. CIT does not arise, hence, the same is hereby '**Expunged**', because the impugned order is not passed in accordance with law, therefore, the same is also cancelled.

6. In the result, the Appeal of the Assessee is allowed for statistical purposes.

The order pronounced on 20.01.2020.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Dated:20-01-2020

SRB

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi