

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI
BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER**

I.T.A. No. 2915/Del/2019
Assessment Year: 2010-11

Vinod Kumar,
C-135, Vikas Nagar,
Phase-3, Uttam Nagar
Hastal Road, Uttam Nagar,
New Delhi
(PAN:AJFPK2388F)
(ASSESSEE)

vs. Income Tax Officer,
Ward-62(2), New Delhi

(RESPONDENT)

Assessee by: Ms. Pooja Jain, CA

Revenue by: Ms. Parul Singh, Sr. DR

ORDER

This appeal is filed by the assessee against the impugned order dated 25.01.2019 passed by the Ld. CIT(A)-38, New Delhi relating to Assessment Year 2010-11 on the following grounds:-

1. *That the whole proceedings of the CIT (Appeals) were bad in law, incorrect, erroneous, against the natural justice and also against the well established practices in this regard.*

2. *That the Ld. CIT(A) has dismissed the appeal and stated in para no. 3.2 of the appellate order " it is evident that the appellant is not interested in filing any details during the appellate proceedings to avail the opportunity under the principle of natural justice. As many as three (3) notices were issued through speed post and ITB portal as noted above. However, it is a matter of record that any kind of documents or details was not submitted by the Authorized Representative of the appellant".*

But

3. *The Ld. CIT(A) has failed to appreciate the circumstances leading to non appearance of appellant and his counsel.*

It may be clarified at this stage that the notices were not issued with appropriate margin of time, and all the notices have been received after the fixed date.

It is further pertinent to be mentioned herein that the notices have been issued in such a way that it couldn't be delivered to the assessee before the date of hearing.

3. That the Ld. CIT (A) has erred by not placing the real facts on record, which could have only brought up by either the Assessing Officer or the First Appellate Authority.

4. That the appellant stated that he has filed his return and submitted the copy of Refund Status as evidence.

For the natural and fair justice, we all (including the AO and CIT (A) if they have knowledge about the facts) are bound to bring the facts on the desk of justice. But after having the knowledge that the original return is in the possession of the AO, he (AO) did not disclose/state the amount of turnover filled in the return form, whereas, it was utmost important in this present case/matter. It is certainly unfair and against the principles of natural justice and also against the established practices in this regard.

5. That the Ld. Assessing Officer has made the assessment erroneously by calculating, income of the appellant/assessee, @8% of the gross receipt of Rs. 1,87,29,839/- shown in ITS statement without verifying the turnover filled in original Return Form which was processed on PAN No. AKNPK7497G by the Department of Income Tax, hence it is bad in law.

6. That the Ld. CIT(A) has erred by passing appellate order on the basis of suspicion and doubt and also ignoring the evidence on record.

It is pertinent to be mentioned herein that neither the A.O. nor the CIT (A) could assign any evidence which could establish/prove that the receipts shown in ITS is different from the turnover shown in the return filed by the assessee.

7. That the assessee/appellant filed an application for supplying the copies of complete set of income tax return including enclosures processed on PAN No. AKNPK7497G in the office of the Assessing Officer, Ward 62(2), on dated 05.03.2019 but till today the same has not been supplied to the appellant by concerned AO. However, these documents will play an important role in deciding the appeal. The copy of the application is enclosed.

8. That in this entire episode, the appellant/assessee was misled, cheated and made scapegoat by the previous tax consultant cum accountant."

2. At the time of hearing, learned counsel for the assessee stated that the learned First Appellate Authority has decided the issues in dispute against the assessee *ex parte* without providing sufficient opportunity of hearing to the assessee and he requested that the issues in dispute may be set aside to the learned First Appellate Authority to decide the same afresh, as per law, after giving opportunity of being heard to the assessee.

3. Learned DR for the Revenue did not raise any objection on the request of the learned counsel for the assessee.

4. After hearing both the parties and perusing the orders passed by the Revenue authorities especially the impugned order, I am of the considered view that learned First Appellate Authority has decided the issues in dispute against the assessee by passing a non speaking and *ex parte* order and dismissed the appeal of the assessee in limini which is contrary to law and facts on the file and liable to be cancelled. Therefore, in the interest of justice, I am cancelling the impugned order and setting aside the issues in dispute to the learned First Appellate Authority to decide the same afresh, as per law, after giving opportunity of being heard to the assessee.

5. Keeping in view the non cooperation of the assessee before the Revenue authorities, I am directing the assessee through his counsel to appear before the learned First Appellate Authority on 23.04.2020 at 10:00 am. There is no need to issue notice to the assessee for 23.04.2020 because this order has been pronounced in the Open Court.

6. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 12/02/2020.

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

Date: 12/02/2020

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Copy forwarded to: -

1. Appellant -
 2. Respondent -
 3. CIT
 4. CIT (A)
 5. DR, ITAT
- TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches