

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.2532/Del/2017
(for Assessment Year : 2012-13)

JMD Oils Pvt. Ltd., 5/25, Ramesh Nagar New Delhi PAN : AAACJ 2726 R (APPELLANT)	Vs.	DCIT Circle – 13(1), New Delhi (RESPONDENT)
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Assessee by	--None--
Revenue by	Mrs. Aashma Paul, CIT

Date of hearing:	06.04.2021
Date of Pronouncement:	06.04.2021

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-32, New Delhi dated 28.02.2017 for Assessment Years 2012-13.

2. Assessee is a company stated to be engaged in the business of manufacturing and trading of edible oils and ghee. Assessee electronically filed its return of income dated 30.09.2012 for A.Y.

2012-13 declaring total income of Rs.16,82,741/- under normal provisions and book profit of Rs.23,92,03,151/-. The case was selected for scrutiny and assessment was framed under section 143(3) of the Income Tax Act, 1961 order dated 25.03.2015 and the total income was determined at Rs.11,65,80,450/-.

3. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 28.02.2017 in Appeal No.250/2016-7 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds:

1. *“Ld. CIT(A) has erred in facts and in law in passing the impugned order without giving a sufficient and proper opportunity to the assessee. The impugned order is therefore passed in violation of principles of natural justice.*
2. *On the facts and in the circumstances of the case, Ld. CIT(A) has erred in disposing of the appeal ex-parte, qua the assessee without adjudicating the issues raised in appeal on merits.*
3. *Ld. CIT(A) has erred in facts and in law in not adjudicating the ground of appeal raised by the assessee that the Ld. AO has erred in disallowing the expenditure of Rs.11,33,48,699 on the ground that the liability towards payment of said amount has not been crystallized because documents regarding purchase of Crude Palm oil from M/s Louis Dreyfus commodities Asia Pvt. Ltd. has not been produced, whereas all these documents were duly shown to Ld. AO at the time of Assessment.*
4. *Ld. CIT(A) has erred in facts and in law in not adjudicating the ground of appeal raised by the assessee that the Ld. AO has erred in disallowing the liability of Rs. 11,33,48,699 on the ground that the assessee is still contesting the claim, without appreciating the fact that the liability was crystalized only after receiving a legal advice from the experts that further legal perused with regard to this liability is meaningless.*
5. *Ld. CIT(A) has erred in facts and in law in not adjudicating*

the ground of appeal raised by the assessee that the Ld. AO has erred in holding that exchange fluctuations' loss cannot be of magnitude of T 11,33,48,699 within of period of 57 days to 87 days without appreciating the evidential proof duly produced before the Ld. A.O.

6. *The Ld. CIT(A) has erred in facts and in law in not adjudicating the ground of appeal raised by the assessee that the Ld. AO has erred in treating the hire charges of Rs.3,22,146 paid under hire purchase agreement as payment of interest whereas, as per CBDT circular no. No. 1425 dated 16.11.1981 such payments do not falls in the category of payment of interest within the meaning of section 2(28A) of the Income Tax Act and are not liable for deduction of TDS. The disallowance made by Ld. AO u/s 40(a) (ia) against the explicit provisions of law and instruction of the board.*
7. *The assessee company has craves its indulgence to alter, amend, delete or to make any additional grounds of appeal at the time of hearing of appeal.”*

4. Case file reveals that there is no appearance on behalf of the assessee and even on the date of hearing none appeared on behalf of the assessee though the notice of hearing was issued to the assessee. We therefore proceed to dispose of the appeal *ex parte* qua the assessee after considering the material on record and hearing the DR.

5. Before us, Learned DR supported the order of lower authorities.

6. We have heard Learned DR and perused the material on record. The perusal of CIT(A) order reveals that CIT(A) has passed an *ex parte* order without deciding the issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state

the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by dismissing the appeal without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be condemned unheard. In view of these facts, we set aside the impugned order of CIT(A) dated 28.02.2017 and restore the issue to the file of CIT(A) for re-adjudication of the issues after granting sufficient opportunity of hearing to the assessee. Assessee is also directed to furnish the details called for by the lower authorities. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the grounds raised by the assessee. **Thus the ground of assessee is allowed for statistical purposes.**

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

Order pronounced in the open court on 06.04.2021

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Date:- 06.04.2021

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Copy forwarded to:

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

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	06.04.2021
Date on which the typed draft is placed before the dictating Member	06.04.2021
Date on which the approved draft comes to the Sr.PS/PS	06.04.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	06.04.2021
Date on which the fair order comes back to the Sr. PS/ PS	06.04.2021
Date on which the final order is uploaded on the website of ITAT	06.04.2021
Date on which the file goes to the Bench Clerk	06.04.2021
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	