

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

**BEFORE,
SMT. DIVA SINGH, JUDICIAL MEMBER**

**I.T.A No.1936/Del/2020
(ASSESSMENT YEAR: 2017-18)**

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| M/s Matrix Consultancy Services, Flat No.128, PKT-5 GF, Sector-21, Rohini, New Delhi-110 085 PAN-AAQFM 5345L (Appellant) | Vs. | DCIT, CPC, Bengaluru (Respondent) |
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|-----------------------|-------------------------------|
| Appellant By | Ms. Mitali Dama, CA |
| Respondent by | Sh. R.K. Gupta, Sr. DR |
| Date of Hearing | 16.08.2021 |
| Date of Pronouncement | 17.08.2021 |

Hearing conducted via Webex

ORDER

The present appeal has been filed by the assessee wherein the correctness of the order dated 31.08.2020 of CIT(A)-13, New Delhi pertaining to 2017-18 assessment year is assailed on various grounds including ground No.1 on which the parties were heard. Said ground is reproduced here under for the sake of completeness.

"1. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in upholding the action of DCIT, CPC in classifying business activities of the appellant u/s 44DA as against section 44AD through intimation passed u/s 143(1) by neither affording adequate opportunity of being heard to the appellant nor providing any reasoning/explanation for such impugned adjustments; thereby violating the principles of natural justice as held by this Hon'ble Bench in case of AWP Assistance (India) Pvt. Ltd. vs. DCIT [ITA 5128/Del/2018; order dated 07.08.2020].

2. Both the parties have heard.

3. A perusal of the impugned order shows that the appeal order has been passed without hearing the assessee effectively. "Para 3.1 of the order made a reference to some a written submissions filed by e-mail on 13.08.2020 by the assessee. A perusal of the order shows that the written submissions were found to be inadequate for granting the relief prayed for. From a perusal of the order it is evident that the assessee was not put to notice of this fact that the written submissions were not sufficient for granting relief. Accordingly, the order having failed to pass the tests of fair and effective hearing in terms of the principles of natural justice cannot be upheld. It is a settled legal position that before passing an adverse order it is incumbent upon the adjudicating authority to give due opportunity of being heard to the appellant. An appellant may remain on a mistaken belief that its claim is being allowed on the basis of the written submission. By making its submissions available the appellant does not waive off his right to be heard. In the facts of the present case, effective and meaningful opportunity of being heard admittedly has not been granted to the assessee. Thus, in the interests of substantial justice, the impugned order is set aside and issues are restored back to the file of CIT(A) with the direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. The assessee in its own interests is directed to ensure full and proper participation before the Appellate Authority and not to abuse the trust

reposed. Said order was pronounced at the time of virtual hearing itself in the presence of the parties Webex.

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

Order pronounced on 17th August, 2021.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Dated: 17/08/2021

PK/PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI