FIT FOR PUBLICATION

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

BEFORE,
SMT. DIVA SINGH, JUDICIAL MEMBER

I.T.A No.7463/Del/2019
(ASSESSMENT YEAR: 2011-12)

Sukhvinder Pal Singh, KG-1/ 323, DDA Flats, Vikaspuri, New Delhi-110 018 PAN-ABJPS 5558D	Vs.	Income Tax Officer, Ward-44(I), New Delhi
(Appellant)		**(Respondent)**

Appellant By	**None**
Respondent by	**Sh. R.K. Gupta, Sr. DR**
Date of Hearing	**16.08.2021**
Date of Pronouncement	**14.09.2021**

Hearing conducted via Webex

ORDER

The present appeal has been filed by the assessee wherein the correctness of the order dated 24.06.2019 of CIT(A)-15 pertaining to 2011-12 assessment year is assailed on various grounds including ground No.2 which read as under:

> *"2. The Ld. Commissioner of Income Tax (Appeals)-15, New Delhi did not afford reasonable opportunity on the innocuous appellant to furnish documentary evidence and other details as desired necessary by him."*

2. At the time of hearing, no one was present on behalf of the assessee. Noticing that apart from the above ground, various other grounds have also been raised by the assessee, it was deemed appropriate to pass over the appeal. However, even in the second round, the position remained the same. Accordingly, after hearing the

Ld. Sr. DR it was deemed appropriate to proceed with the appeal *ex-parte* qua the assessee appellant on merits.

3. The Ld. Sr. DR submitted that the appeal of the assessee may be dismissed in view of the fact that no documentary evidences were filed by the assessee in support of his claim. However, the said request of the Ld. SR. DR cannot be accepted in view of the fact that a perusal of the page-2 of the impugned order shows that in para 3 some written submissions seem to have been filed. The submissions admittedly were considered to be insufficient for warranting relief. The addition made by the AO was confirmed. The specific finding under challenge from the impugned order is extracted hereunder for completeness :

> ***"4. DECISION:*** *The contention of the Appellant has been considered and the order of AO has also been perused. There were cash deposits of Rs.29,44,900/- in the bank account of the assessee. The AO had duly granted the opportunity 'of hearing on multiple occasions. However, the assessee failed to appear and comply with the notices.* ***The order has been passed u/s 147/144 of the I.T. Act.***
>
> *During the course of appellate proceedings, the AR of the appellant has contended that the assessee was into the business of Truck Plying business and was owning 8 trucks.* ***However, no documentary evidences were furnished in support of the business and the details of investment into the trucks owned by him.*** *It is seen from the order of the AO, the AO had not added the full deposits of Rs.29,44,900/-. The AO has only applied a profit rate of 20% in absence of any explanation from the side of the appellant. The order of the AO is very reasonable and fair. Therefore, I do not find any reason to interfere with the findings of the AO and the addition of Rs. 5,83,980/- is hereby* ***confirmed."***
>
> ***(emphasis supplied)***

4. A perusal of the above shows that the claim made in the written submissions was not substantiated by the assessee. A perusal of the record shows that there is nothing on record to show that any such opportunity was granted by the CIT(A). It is well settled that in case an adjudicating authority finds the

written submissions are not sufficient and complete then necessarily the First Appellate Authority should put this deficiency to the notice of the appellant. Without any specific communication to this effect, **it cannot be said in all fairness that an effective opportunity of being heard has been granted to the assessee**. Once it is seen that the submissions were without supporting documentary evidences then in an effective representation such an opportunity necessarily needs to be provided. No such effort appears to have been done. It is well settled that the mere making available of the written submissions by an assessee cannot be unilatedly so interpreted to mean that right to be heard has been waived off. Principles of natural justice mandate that a fair and effective opportunity of being heard is provided. Right to be heard forms the bedrock of the cluster of principles of fair hearing which go by the nomenclatures of principles of natural justice. Audi alterem partem which is one of the foundational and fundamental bedrocks of natural justice means that **no one should be condemned un-heard**. Though these Rules are not necessarily codified, however, these have so evolved over the years that they are expected to be necessarily adhered to not only when statutory provisions so provide but these have also been impliedly read into the rules and necessarily are required to be adhered to also by quasi administrative decision making authorities whereby the rights/interests of the party are adversely effected. In such circumstances, fair play and rule of law necessitates that the procedure required to be adhered to necessarily envisages a right to be heard. **The due process of law envisages an opportunity of fair representation**. It is evident from the impugned order that the right to be heard was

not waived off by the assessee by mere making available of the written submissions to the First Appellate Authority. It goes without saying that a party may choose to waive the right to be heard and instead choose to rely on written submissions only. However, it is the duty of the adjudicating authority to ensure that the waiver so made is consciously made and with full knowledge and understanding that the right to be heard exists. The record is silent on this aspect. In the facts of the present case there is nothing on record to show that the right to be heard was consciously and knowingly waived. Support is drawn from **Amrik Singh Bhullar Vs. ITO [2021] 128 taxmann.com 245 (Chandigarh – Trib.)** wherein a detailed examination of the specific issue namely whether making available of written submissions can be said to tantamount to a conscious waiver of right to be heard by an assessee was specifically considered.

> ***13.1*** *Confining myself only to the principles of natural justice which have been invoked. I am of the view that the answer posed to the above question is a 'no'. The word natural justice is derived from the Roman word "Jus naturale" which presupposes principles of natural law including justice, equity, fair play and good conscience. Fair play pre supposes fair notice of charge, and place of hearing, opportunity of effective hearing to address the charge and speaking order addressing the reasons for agreeing or disagreeing with the claims put forth.*
>
> ***13.2*** *In the facts of the present case, it is seen that written submissions had been advanced. It is seen that the submissions were considered but did not find favour with the First Appellate Authority as the order u/s 154 stood confirmed. From the body of the order, it is not evident whether the assessee was confronted with the fact that its written submissions were not sufficient for relief prayed for and that the assessee was given an opportunity of being heard thereafter.*
>
> ***13.3*** *It is trite law that in the eventuality, written submissions of the assessee were found to be insufficient for granting relief and were considered to be not relevant, then the assessee should in all fairness be necessarily confronted with the fact that its claim was not allowable and be given due notice thereof. The purpose being that if the assessee still has something further to say, the*

> *opportunity of so saying should have been provided. The arbitrary presumption that the assessee shall have nothing to state cannot be upheld.*
>
> ***13.4** Accordingly, in view thereof, the order cannot be upheld and deserves to be set aside.*

5. Similarly in **Harbans Lal V ITO [2018] 97 taxmann.com 622 (Chandigarh - Trib.)** it is seen that waiver of right to be heard has clearly been held to necessitate that the waiver so made is knowingly and consciously made i.e. intelligently made and with full knowledge and understanding i.e. with the foreknowledge that the right to be heard exists. The onus to ensure that the waiver was made with full and conscious knowledge of the existence of this sacrosanct right rests on the shoulders of the adjudicating authority who is to ensure that the assessee stays informed of his rights and consequent duties. There is nothing on record to show that the First Appellate Authority can be justifiably held to form the view in the facts of the present case that the assessee was so informed of its rights and still chose to waive them. The adjudicating authority cannot be permitted to unilaterally presume that there was no supporting evidence with the assessee and hence assessee had nothing further to say.

6. Thus, in the light of the legal position as set hereinabove, I am of the view that since there is nothing available on record to show that the right to be heard was waived off by the assessee, let alone consciously waived off a fair opportunity of being heard effectively has not been made available. Accordingly, on a consideration of facts, circumstances and legal position as enunciated hereinabove and in the interests of substantial justice it is deemed appropriate to set aside the impugned order directing the assessee to place full facts, evidence alongwith supporting claims before the First Appellate Authority. It is made clear that the Ld. CIT(A) shall entertain the fresh evidences and pass an order in accordance the law. Said order

was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

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

Order pronounced on 14th September 2021

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Dated: 14th September, 2021
PK/Ps/Poonam(CHD)
**Kavita Arora, SPS*

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

ASSISTANT REGISTRAR
ITAT NEW DELHI