

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)

ITA No. 2452/Del/2018  
(Assessment Year: 2012-13)

Vijay Kumar Narula, C-1 Block, Plot No. 6, LGF, Rajendra Sunheri Bhawan, Janakpuri, New Delhi PAN: AAHPN9036G	Vs.	ITO, Ward-44(2), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri S. Ghosh Roy, CA
Revenue by:	Shri Rajesh Kumar Dhanesta, Sr. DR
Date of Hearing	10/11/2021
Date of pronouncement	23/11/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-15, new Delhi dated 28.12.2017 for Assessment Year 2012-13 raising following grounds of appeal:-

*GROUND No. 1 - The Ld. Commissioner of Income-Tax (Appeal) erred on facts and in law in ex-parte dismissing the appeal without communicating to the appellant or giving him adequate opportunity to present his case. As such the action of the Ld. CIT(A) is totally unfair, uncalled for, bad in law and against the principles of natural justice and ought to be deleted.*

*GROUND No. 2 - The Ld Commissioner of Income-Tax (Appeal) erred on facts and in law in ex-parte dismissing the appeal without communicating to the appellant or giving him adequate opportunity to present his case. As such the action of the Ld. CIT(A) is totally unfair, uncalled for, bad in law and against the principles of natural justice and ought to be deleted.*

*The Ld. CIT(A) should have looked into the merits of the case as to whether the Ld AO is competent of pass the order or it suffers infirmity on some ground, making such assessment void-ab-intio. As such the order passed by the Ld. CIT(A) is unjustified, uncalled for, bad in law and ought to be deleted.*

*GROUND No.3 - That the Commissioner of Income-tax (Appeal) erred on facts and in law in passing the impugned order without Considering the contention of the appellant that the AO has ignored that parties to whom commission was paid were associated with him from past 10-15 years and that he had been paying commission to them in the past for their services. Hence, by no stretch of imagination these can be said to be an after-thought or non-genuine.*

*GROUND No. 4 -That the Commissioner of Income-tax (Appeal) erred in making arbitrary / extraneous observations based on conjectures/ surmises, which are not in accordance with the facts of the case.*

*GROUND No. 5 -The appellant may be permitted to alter, amend or withdraw any of the grounds of appeal or raise any additional ground of appeal at any time during the course of hearing.*

2. Brief facts of the case shows that the assessee is an individual engaged in the business of wholesale trading of medicines and life saving drugs as proprietary concern in the name of the style M/s. Narula Associates. He filed its return of income on 17.09.2012 showing income of Rs. 964905/-. The case of the assessee was picked up for scrutiny.
3. During the assessment proceedings The ld AO noted that the assessee has debited a sum of Rs. 30 lakhs as commission paid to its agent. The ld AO questioned the same. The assessee submitted that he has debited a commission of Rs. 30 lakhs, which is paid to regular parties, which are associated with him for last 10 to 15 years. They secured the orders, clients from the market and take responsibility for the recovery of the dues. These parties are paid commission on lump sum basis. The assessee submitted the details of nine such parties. The ld AO examined some of the them and issued summons to all the parties u/s 131 of the Act. The statements were recorded of those parties. The assessee was also examined and his statement was recorded. The ld AO after examination of the details disallowed the commission. He rejected the agreement produced before him and method of payment of commission on lump sum basis wherein, in the agreement percentage of commission was mentioned. He also noted that all the persons to whom commission is paid did not mentioned in sales through them. He therefore, disallowed the above sum. The assessment order was passed on 19 March 2015 u/s 143 (3) of the income tax act 1961 determining the total income of the assessee at ₹ 3,997,622 August the return of income filed by the assessee of ₹ 964,905/- wherein he disallowed the commission expenditure of ₹ 30 lakhs and further made a disallowance of ₹ 32,717 on account of personal expenses.
4. Assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A. The learned CIT – A issued 3 is to the assessee however none appeared before him. On 18<sup>th</sup>/11/2016 chartered accountant of the assessee attended the hearing and was asked to submit the representation on 25/11/2016 however on that date also none appeared. Therefore the learned CIT – A noted that assessee is not interested in perused pursuing the above appeal and therefore appeal of the appellant is decided based upon the matter facts available on record. The learned CIT – A recorded the facts upholding the order of the learned assessing officer and passed an order on 28/12/2017 dismissing the appeal of the assessee. Therefore assessee is aggrieved with that order and has preferred this appeal.

5. The learned authorised representative submitted that on 18/11/2016 chartered accountant of the assessee appeared before the learned CIT – A and filed written submissions along with the documentary supporting is however the learned CIT – A dismissed the appeal of the assessee without considering the submissions ex parte without giving any further opportunity to assessee to present his case. It was further stated that on 22/1/2018 the appellant received one SMS giving a choice between the faceless appellate proceedings and personal hearing of the pending appeal. In response to the above message the appellant choose not to opt for a processing adopted the option for personal hearing after logging into the income tax. However despite above fact the assessee received an ex parte order for the impugned assessment year by registered post. The assessee came to know of the order by logging into the site of the income tax department. He therefore submitted that there is no proper opportunity available to the assessee to represent the case before the learned CIT – A.
6. He submitted the copy of the written reply submitted before the learned CIT – A along with the bills and details of the commission payment. He also referred to the details of commission paid to various parties in earlier years. Before us also he submitted a detailed written submission on the allowability of commission expenditure. He also submitted the name of the parties along with the permanent account number and amount of commission paid to them. He also gave the details of the sales made through these parties. He also relied on the several judicial precedents. Accordingly he submitted that the disallowance made by the learned assessing officer and confirmed by the learned CIT – A deserves to be deleted.
7. The learned departmental representative vehemently supported the orders of the lower authorities. It was submitted that the assessee chooses not to appear before the learned CIT – A despite several opportunities granted to him and here before the coordinate bench a detailed paper book has been submitted. It was further stated that it is not possible for the learned DR to verify all these details here and matter should be set-aside back to the file of the learned lower authorities.
8. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also considered the detailed paper book filed by the assessee as well as the fact of receipt of short message services from income tax department stating that the appeal of the assessee was pending. We failed to understand that when the CIT – A has decided the appeal of the assessee on 28/12/2017 now and assessee can receive a short message services from the income tax Department on 22/1/2018 that the appeal of the assessee is pending. Even looking at the order of the learned CIT – A we find that the issue has not been decided on the merits of the case or even after considering the written submission filed by the assessee before him. The learned CIT – A has decided the issue

stating that assessee is not interested in pursuing the above appeal. It is also fact that the learned CIT – A has issued several notices to the assessee, which remained on complied with. Therefore, as per the argument of both the parties, and looking at the various details produced before us along with the several judicial precedents, in the interest of justice, we set-aside the whole issue back to the file of the learned CIT – A with a direction to the assessee to submit all these details before the learned CIT – A within six months from the date of this order. The learned CIT – A after hearing the assessee and perusing the details furnished, may decide the issue on the merits of the case. In the result all the grounds of appeal of the assessee are set-aside back to the file of the learned CIT – A with above directions.

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

Order pronounced in the open court on 23/11/2021.

-Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 23/11/2021  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi