

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 5864/Del/2016
Assessment Year: 2012-13

WESTERN DRILLING CONTRACTORS VS. ITO, WARD 3(5),
PRIVATE LIMITED, 5TH FLOOR, AAYAKAR
PLOT NO. 1A, SECTOR 16A, BHAWAN, SECTOR-24,
NOIDA-201301 (UP) NOIDA-201301

(PAN: AAAPW5961A)

(APPELLANT)

(RESPONDENT)

Assessee by : SH. RISHABH MALHOTRA, ADV.
Department by : SH. RAKESH KUMAR, SR. DR

ORDER

This appeal has been filed by the Assessee against the order dated 31.8.2016 of the Ld. CIT(A)-I, Noida relating to assessment year 2012-13.

2. The grounds raised by the assessee read as under:-

1.0 That the Learned CIT(A) grossly erred on facts and in law in passing the impugned order without giving sufficient and a proper opportunity to the appellant to be heard. The impugned order is passed in violation of Principles of Natural Justice.

2.0 That on the facts and circumstances of the case and in law the Learned CIT(A) erred in confirming the

assessment of Interest of Rs 27,82,217/- earned on Fixed deposits placed as Margin Money with Bank for issue of Bank Guarantee for Oil Blocks, as income.

- 3.0 Without prejudice, on facts and circumstances of the case and in law the learned CIT(A) erred in confirming the addition of Gross receipts of Interest as income. The Ld CIT(A) erred in not allowing deduction of expense of Rs 49,07,818/- incurred directly and exclusively towards earning such interest income.
- 4.0 That, on the facts and circumstances of the case the Ld. CIT (A) erred in not allowing TDS credit of Rs 5,56,444/-.
- 5.0 That, on the facts and circumstances of the case the Ld. CIT (A) erred in confirming the interest of Rs 200308/-, charged under Section 234B, of the Act.
- 6.0 That in the facts and circumstances of the case the order passed by Ld. CIT (A) is bad in law.

The grounds of appeal taken are without prejudice to each other.

The Appellant craves leave to add, alter, amend, or vary the above grounds of appeal at or before the time of hearing.

3. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

4. Ld. Counsel of the assessee stated that the Ld. CIT(A) has passed the order against the principles of natural justice by way of ex parte order in not providing sufficient opportunity to the assessee. Hence, he requested that the issue involved in the present appeal may be set aside to the file of the Ld. CIT(A) for fresh adjudication.

5. On the other hand, Ld. DR relied upon the orders of the authorities below and stated that sufficient opportunity was granted, but assessee could not availed the same by him. Hence, he opposed the request of the Ld. Counsel of the assessee for setting aside the issues to the file of the Ld. CIT(A) for deciding the same afresh.

6. I have heard both the parties and perused the records. It was the contention of the assessee's counsel that Ld. CIT(A) has dismissed the Appeal by not providing sufficient opportunities to the assessee which is against the principle of natural justice. I note that Ld. CIT(A), has given his finding in the impugned order 31.8.2016 vide para no. 2 at page no. 1 & 2 of his order. The said relevant paras are reproduced as under:-

"2. The appeal of the appellant was fixed for hearing for 03.05.2016 but the appellant on 5.5.2016 moved a letter seeking adjournment on the ground that the written submission was under finalization. The same

was allowed and case was adjourned to 18.5.2016. on 18.5.2016 another letter was filed for adjournment on the ground that one Sh. S.K. Sureke was undergoing treatment and therefore was not able to attend the hearing. As a proof of the same some oney receipts in the name of the said person was enclosed issued by some Pathak Ved Cure Centre run by one Dr. Sarvesh Kumar Pathak a self claimed naturopath. As is evident this person is not competent to provide any medical treatment. Further, the nexus of the said person with the appellant is also not disclosed. The letter dated 18.5.2016 as filed by the appellant does not discloses the name of the person or the nexus with the appellant who was undergoing the alleged treatment. It is but obvious that appellant is avoiding appearing in the present appeal. The appeal is therefore dismissed for want of prosecution. The impugned assessment order is confirmed. The appeal of the appellant fails and is dismissed.”

6.1 After perusing the aforesaid finding of the Ld. CIT(A), I am of the considered view that that Ld. CIT(A) has passed a non-speaking and exparte order, which is not sustainable in the eyes of law. Therefore, in the interest of justice, I set aside the issues in dispute to the file of the Ld. CIT(A) to decide the issues in dispute afresh, in accordance with

law, after giving adequate opportunity of being heard to the assessee and pass a speaking order. However, the Assessee is also directed to fully cooperate with the Id. CIT(A) and produce all the documents before him to substantiate his claim and not to take any unnecessary adjournment.

7. In the result, the Appeal filed by the Assessee stands allowed for statistical purpose.

Order pronounced in the Open Court on 02/02/2017.

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated: 02/02/2017

SR BHATNAGAR

Copy forwarded to: -

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

By Order,

ASSISTANT REGISTRAR