

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 9281/DEL/2019**  
**[Assessment Year: 2015-16]**

Prince public School Society, C/o CA Rasik Makkar, N-59, GK-I, New Delhi. PAN- AAATP3551B	<u>Vs</u>	Income-tax Officer(E), Ward-2(4), NewDelhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	<b>Sh. Vinod Kumar Bindal, Adv. Smt. Rinki Sharma Adv.</b>	
<b>Respondent by</b>	<b>Sh. Om Prakash, Sr. DR</b>	
<b>Date of hearing</b>	<b>25.05.2022</b>	
<b>Date of pronouncement</b>	<b>07.06.2022</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-40, Delhi, dated 19.09.2019, pertaining to the assessment year 2015-16. The assessee has raised following grounds of appeal:

*“1. That on the facts and circumstances of the case the orders passed by the Ld. Assessing Officer and confirmed by the Ld. CIT (Appeals)-40, New Delhi, Ms. Dipika Mittal vide her Order dated 19.09.2019 are both bad in*

*law' and equity*

2. *That on the facts and circumstances of the case Ld. Assessing Officer has erred in facts and in law in passing ex-parte order under section 144 of the Income Tax Act, 1961 without giving any sufficient opportunity to be heard and explain the documents filed by the Appellant at the time of assessment proceedings as such documents were filed by the authorised representative of the Appellant, Late CA Sunil Kalra who, at the time of assessment proceedings was suffering from Stage-IV lung cancer and who is now no more and the Ex-parte assessment order was confirmed by the Ld. CIT (Appeals)-40, New Delhi.*

3. *That on the facts and circumstances of the case the Ld. CIT (Appeals)-40, New Delhi did not consider any facts, evidences and submissions put forth by the Appellant but merely relied on the ex-parte assessment order passed by the Ld. Assessing Officer under section 144 of the Income Tax Act, 1961 in disposing of the appeal which, in itself, was passed without providing sufficient opportunity to the Appellant to put forth its arguments as the authorised representative of the Appellant, Late CA Sunil Kalra was suffering from Stage IV lung cancer at the time of assessment proceedings.*

4. *That on the facts and circumstances of the case the Ld. Assessing Officer and the CIT (Appeals)-40, New Delhi have erred in facts and in law in withdrawing and denying the benefit of exemption conferred on the Appellant under section 11 and 12 of the Income Tax Act, 1961 merely on the basis of certain payments made by Appellant to persons covered under section 13(3) of the Income Tax Act, 1961 when all such payments had valid reasons and purposes and the same were justifiable as per law and not unreasonable by any stretch of imagination.*

5. *That on the facts and circumstances of the case the Ld. Assessing Officer and the CIT (Appeals)-40, New Delhi have erred in facts and in law in applying the generic provisions of section 13(1)(c)(ii) of the Income Tax Act, 1961 and thus, withdrawing the exemption available to the Appellant without even commenting on the provisions of section 13(2)(c) of the Income Tax Act, 1961 which specifically confer protection to the Appellant against blatant application of generic provisions of section 13(1)(c)(ii) of the Income Tax Act, 1961*

6. *That on the facts and circumstances of the case the Ld. Assessing Officer and the Ld. CIT (Appeals)-40, New Delhi (Appeals) have erred in facts and in law in treating the expenses in form of salary, rent, transportation charges, outsourcing payments, printing charges etc. paid to specified persons u/s 13(3) disallowable under section 13(1)(c)(ii) of the Income Tax Act, 1961 disregarding the educational qualifications and experience of such persons, reasonableness of such expenses and not considering the provisions of section 13(2)(c) of the Act.*

7. *That without prejudice to the above grounds put forth by the assessee, the Ld. Assessing Officer has wrongly, illegitimately and illegally assessed the income of the Appellant at 4% of the gross receipts of the Appellant without providing any evidence backing the same and without realizing that in the past, the surplus generated by the assessee out of its operations have been far lower than 4% of gross receipts estimated by the Ld. Assessing Officer and confirmed by the Ld. CIT (Appeals)-40, New Delhi.*

8. *That without prejudice to the above grounds, disallowances and additions to the returned income is highly excessive and much beyond the requirements of the case.*

9. *That the above grounds of appeal are independent and without prejudice to one another*

10. *That the Appellant craves leave to add, alter, amend or delete any ground of appeal at any time during the Appellate proceedings.”*

2. The facts giving rise to the present appeal are that in this case the assessee filed its return of income along with audit report which was processed u/s 143(1) of the Income Tax Act, 1961, hereinafter referred to as the “Act” and was subsequently selected for scrutiny assessment. It is recorded by the Assessing Officer that in response to statutory notice the authorised representative of the assessee attended the hearing initially and filed details. However, later on, no one

attended the proceedings on behalf of the assessee. Therefore, the Assessing Officer passed the ex parte order u/s 143(3) read with Section 144 of the Act. Thereby the Assessing Officer assessed income at Rs. 31,26,820/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals) who, after considering the submissions, dismissed the appeal. Now the assessee is in appeal before the Tribunal.

3. At the outset learned counsel for the assessee Shri Vinod Kumar Bindal submitted that the impugned assessment order has been passed ex parte to the assessee. Moreover, the learned CIT(Appeals) also has not passed a speaking order by considering the submissions of the assessee. Therefore, there is a gross violation of principles of natural justice by the authorities below.

4. On the contrary, learned DR opposed the submissions and supported the orders of the authorities below.

5. I have heard rival submissions and perused the material on record. I find that the Assessing Officer passed the impugned order ex parte to the assessee. Learned CIT(Appeals) decided the appeal without giving adequate opportunity to the assessee to rebut the finding of the Assessing Officer. Therefore, looking to the facts and circumstances of the case and to sub serve the principles of natural justice , I deem it proper to restore the assessment to the file of the Assessing Officer to make the assessment afresh after giving adequate opportunity to the

assessee. Therefore, the impugned order is hereby set aside and the Assessing Officer is directed to make assessment afresh. Needless to say that Assessing Officer would afford adequate opportunity to the assessee. Grounds of appeal are allowed for statistical purposes.

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

Order pronounced in open court on 7<sup>th</sup> June, 2022.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**