

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
&  
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

I.T.A. No.2039/DEL/2019  
Assessment Year 2015-16

Vaishno Devi Trust, B-114, Sector-51, Noida	v.	ITO, Ward-2(5), Noida.
TAN/PAN: AABTV8755C		
(Appellant)		(Respondent)

Appellant by:	ShriGauravBansal, CA		
Respondent by:	Shri T. Kipgen, CIT-DR		
Date of hearing:	18	04	2022
Date of pronouncement:	03	06	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-I, Noida ('CIT(A)' in short) dated 28.09.2018 arising from the assessment order dated 26.12.2017 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. When the matter was called for hearing, Id. counsel for the assessee, at the outset, pointed out that the CIT(A) vide notice dated 12.09.2018 fixed the date of hearing for 26.09.2018. In

response thereto, the assessee applied for and sought an adjournment on account of professional occupation due to tax audit and statutory audit. However, the CIT(A) declined the adjournment and did not grant any further opportunity and passed the appellate order dated 28.09.2018 *ex-parte*. The ld. counsel thus submitted that the first appellate order has been passed as an empty formality without giving any effective opportunity of being heard. The ld. counsel accordingly submitted that the first appellate order should be set aside and the subject matter of grievance be restored to the file of the CIT(A) for adjudication afresh in accordance with law after giving reasonable opportunity expected by the tax payer. The Ld. counsel accordingly sought suitable relief in the facts of the case.

3. We find palpable merit in the contentions advanced on behalf of assessee towards infringement of natural justice. On perusal of the impugned first appellate order passed under Section 250 of the Act dated 28.09.2018, we find that vide notice dated 12.09.2018, hearing was fixed on 26.09.2018. The assessee responded to the aforesaid notice and filed a letter dated 25.09.2018 on behalf of the assessee that the concerned

counsel is occupied owing to ongoing tax audit and statutory audit of companies and thus expressed his inability to attend the proceedings and consequently requested for an adjournment. The CIT(A) however did not pay any heed to such request. The appeal was wrapped up and dismissed *ex-parte* hastily on the ground that professional preoccupation of a counsel is no ground for seeking adjournment. Thus, a solitary opportunity was given and the request for an adjournment was declined leading to *ex-parte* order.

4. The iniquitous approach of the first appellate authority leaves us completely baffled. The solitary opportunity of few days to attend the hearing is nothing but a mere presence and empty formality. Needless to say, the adherence to principles of natural justice is the very soul to administration of justice. These overriding principles enjoins the quasi-judicial authority to provide an effective opportunity to the subject assessee before arriving at any conclusion adverse to the assessee. The unrestraint conduct of the First Appellate Authority in denying any effective opportunity reeks of high handedness and abuse of the authority to say the least. Such brazen conduct of a very senior quasi judicial functionary has a debilitating impact on the

tax payers and invokes distrust and ruse against the dispensation. This is a case of blatant impropriety in exercising the judicial power making the assessee to run from pillar to post. Overtly, the impugned order of CIT(A) is in complete subversion of sacrosanct principles of natural justice resulting in a travesty of justice. Such *ipse-dixit* of the CIT(A) cannot be countenanced in law even remotely.

5. The impugned perfunctory order of the Ld. CIT(A) appealed against, thus requires to be set aside without any demur.

6. All the issues raised in the *ex-parte* order earlier are thus revived and restored for *denovo* adjudication by the First Appellate Authority. Needless to say, reasonable opportunity shall be granted to the assessee while adjudicating the grounds of appeal. It shall be open to the assessee to support and corroborate its case by adducing such material/information as may be considered expedient by it. Ld. CIT(A) shall pass a speaking order thereon in accordance with law.

Sd/-  
**[PRADIP KUMAR KEDIA]**  
**ACCOUNTANT MEMBER**

## **Ascent Order**

### **Per: N K Choudhry, J.M.:**

7. Perused the order of the Hon'ble AM, I am in agreement of the conclusion drawn by Hon'ble AM, however writing reasons as per my diction.

8. The impugned order was passed by the Ld. CIT(A) as ex-parte and therefore issue emerge, whether the principles of natural justice have been complied with, in the instant case by the Ld. CIT(A) by giving proper and reasonable opportunity of being heard to the Assessee.

9. It is trite to say that every person has the right to speak and be heard when allegations are being put towards him or her. If no opportunity has been given to the party effected, then it shall amount to violations of the principles of natural justice, which embedded in latin words "Audi AlteramPartem" which means 'hear the other side', or 'no man should be condemned un-heard' or 'both the sides must be heard before passing any order'. The principle of Audi AlteramPartem is the basic concept of the principles of natural justice, evolved through civilization and mankind and is the concept of common law, which implies fairness, reasonableness, equality and equity.

In India, the principles of natural justice are the grounds of Article 14 and 21 of the Constitution. Article 14 enshrines that every person should be treated equally. In the landmark case of 'Menka Gandhi vs. The Union of India' (1978 AIR 597), it has been held by Constitution Bench of the Apex Court that *the law and procedure must be of a fair, just and reasonable kind. The doctrine ensures a fair hearing and fair justice to both the parties. Under this doctrine, both the parties have the right to speak. The aim of this principle is to give an opportunity to the*

*parties to defend themselves. Before the court, both the parties are equal and are entitlement of equal opportunity to represent them. If the order is passed by the authority without providing the reasonable opportunity of being heard to the person affected by it adversely will be invalid and shall be liable to be set aside.*

It is also a settled principle that the effort of the court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, but to see whether it is possible to entertain his grievance if it is genuine.

10. Admittedly in the instant case, the Assessee's appeal against the Assessment order dated 26-12-2017 was fixed, only once for hearing on dated 26-09-2018 by the Ld. CIT(A), on which date the Ld. AR of the Assessee by filling an application sought adjournment on the ground of pre-professional commitments for statutory compliances, however the Ld. CIT(A) declined the adjournment and proceeded to decide the appeal as ex-parte, which goes to show that no proper and reasonable opportunity of being heard was afforded to the Assessee and therefore violated the principle of "Audi AlteramPartem". Hence considering the peculiar facts and circumstances of the case, it would be appropriate to set aside the impugned order and to remand back the instant case to the file of the Ld. CIT(A) for decision afresh on merits by passing speaking order in accordance to law, suffice to say while affording proper and reasonable opportunity of being heard to the Assessee, hence ordered accordingly .

Sd/-

**{ NARENDER KUMAR CHOUDHRY**  
**JUDICIAL MEMBER**

11. In the result, the appeal of the Assessee is allowed for statistical purposes.

**Order was pronounced in the open Court on 03/06/2022.**

Sd/-  
**[NARENDER KUMAR CHOUDHRY]**  
**JUDICIAL MEMBER**  
DATED: **03/06/2022**

Sd/-  
**[PRADIP KUMAR KEDIA]**  
**ACCOUNTANT MEMBER**