

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B' NEW DLEHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 3317/Del/2019  
Assessment Year: 2010-11**

Smt. Sona, Ch. No. 206-  
207, Ansal Satyam RDC  
Rajnagar, Ghaziabad.

**PAN: JOAPS4981F**  
(Appellant)

VersuS

Income-tax Officer,  
Ward 2(3), Ghaziabad.

(Respondent)

**C.O. No. 118/Del/2019  
(in ITA No. 3317/Del/2019)  
Assessment Year: 2010-11**

Income-tax Officer,  
Ward 2(3), Ghaziabad.

(Appellant)

VersuS

Smt. Sona, Ch. No. 206-207,  
Ansal Satyam RDC Rajnagar,  
Ghaziabad.

(Respondent)

Assessee by : None  
Revenue by : Shri B.K. Singh, Ld. Sr. DR

Date of hearing : 28/06/2022  
Date of order : 28/06/2022

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

The appeal by the Assessee and the cross-objection by the Revenue Department are directed against the order dated 28.09.2018, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-1, Noida (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2010-11.

2. Though in the instant case, the Assessee has moved an application for adjournment, however, we realize the impugned order is an ex-parte and under challenge not by the Assessee only but also by the Revenue Department on the point of jurisdiction, hence we deem it appropriate to reject the adjournment application and to proceed with the matter.

3. The Assessee, being aggrieved, has preferred the appeal No. 3317/Del/2019 against the impugned order, whereas the Revenue department has preferred cross objection No. 118/Del/2019 against the same order on the ground that the Id. Commissioner had no jurisdiction because as per CBDT Notification No. 66/2014 dated 13.11.2014 read with order No. G-03/2014-15 dated 15.11.2014 of Ld. Pr. CCIT (CCA) Kanpur, the Assessee's case/appeal falls within the jurisdiction of CIT(Appeals), Ghaziabad and therefore, Id. CIT(Appeals)-I, Noida has erred in passing the order under challenge, as the same is a nullity in the eyes of law.

4. At this stage, before going into the controversy whether Id. Commissioner had jurisdiction to decide the appeal of the Assessee or not, we are inclined to decide the appeal of the Assessee, first.

5. 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.

6. 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.

7. Admittedly in the instant case, the Assessee's appeal against the Assessment order dated 13-12-2017, was fixed for hearing only once on dated 19.09.2018 vide notice dated 04-09-2017 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 and ultimately dismissed the appeal of the Assessee being un-admitted and also for want of jurisdiction on non-compliance of the provisions of Section 249(4)(b) of the Act.

Facts stated above goes to show that no proper and reasonable opportunity of being heard was afforded to the Assessee by the Ld. Commissioner and therefore violated the principle of "Audi Alteram Partem". 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) Ghaziabad**, 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 .

8. Coming to the Cross objection by the Revenue Department, in view of the order in Assessee's appeal i.e. **ITA No. 3317/Del/2019** , the CO no. **118/Del/2019** filed by the Revenue Department is also liable to be allowed .

9. In the result, the appeal filed by the Assessee and the cross objections filed by the Revenue Department stands allowed for statistical purposes.

Order pronounced in the open court on 28/06/2022.

Sd/-

**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**

\*aks/-