

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER**

ITA No. 138/Del/2021
(Assessment Year : 2014-15)

Rathi Steel & Power Ltd., 1010/121, 3 rd Floor, Chauhan Market, Madanpur Khadar, Pocket-D & E, Sarita Vihar, New Delhi – 110044 PAN No. AAACR 1435 K (APPELLANT)	Vs.	ACIT Range – 78 New Delhi (RESPONDENT)
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Assessee by	Ms. Supriya Mehta, C.A.
Revenue by	Shri M. Baranwal, Sr. D.R.

Date of hearing:	01.08.2022
Date of Pronouncement:	04.08.2022

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 17.06.2019 of the Commissioner of Income Tax (Appeals)-31, New Delhi relating to Assessment Year 2014-15.

2. Brief facts of the case as culled out from the material on record are as under :-

3. AO has noted that assessee had failed to issue TDS certificate to the deductee within the prescribed time u/s 203 of the Act and accordingly, he initiated the penalty proceedings u/s 272A(2)(g) of the Act. Thereafter, AO vide order dated 29.04.2017 levied penalty of Rs.11,84,599 /- u/s 272A(2)(g) of the Act.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 17.06.2019 in Appeal No.167/18-19/35/17-18 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

- “1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*
- 2. On the facts and circumstances of the case the order passed by the learned CIT(A) is bad in law having been passing the order without giving the assessee reasonable opportunity of being heard in clear violation of the principles of natural justice.*
- 3. On the facts and circumstance of the case, the Learned CIT(A) has erred both on facts and in laws in confirming the penalty of Rs.11,84,599/- levied by JCIT under section 272A(2)(g) of the Act.*
- 4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty rejecting the contention of the assessee that delay in issuance of TDS certificate was on account of a reasonable cause in terms of provision of Section 273B, as such the penalty is not leviable.*
- 5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty*

levied by JCIT ignoring the fact that there is no loss of revenue on account delay in issuance of TDS certificate as assessee had deducted TDS and deposited the same to the Government account as per law.

6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty levied by JCIT despite that same has been levied without giving assessee an opportunity of being heard under section 272A(4) in violation of principle of natural justice.*
7. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming penalty despite the fact that there is no contumacious conduct on the part of the assessee for the delay in issuing of TDS certificates.*
8. *The appellant craves leave to add, amend, or alter any of the grounds of appeal.*

5. Before us, Learned AR at the outset, stated that before CIT(A) adjournment was sought on account of ill health of wife of AR but CIT(A) did not grant the adjournment and has dismissed the appeal and while dismissing the appeal he has not decided the issue on merits. She stated that one more opportunity be granted to the assessee to plead its case and she undertakes that the assessee would be represented before the authorities and all the required details called for by authorities will be furnished.

6. Learned DR on the other hand supported the order of AO.

7. We have heard the rival submissions and perused the material available on record. The perusal of CIT(A) order reveals that CIT(A) has passed an *ex parte* order without deciding the

issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by dismissing the appeal without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be condemned unheard. In view of these facts, we set aside the impugned order of CIT(A) dated 17.06.2019 and restore the issue to the file of CIT(A) for re-adjudication of the issues after granting sufficient opportunity of hearing to the assessee. Assessee is also directed to furnish the details called for by the lower authorities. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the grounds raised by the assessee. **Thus the ground of assessee is allowed for statistical purposes.**

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

Order pronounced in the open court on 04.08.2022

**Sd/-
(NARENDER KUMAR CHOUDHARY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- .08.2022
PY*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	01.08.2022
Date on which the typed draft is placed before the dictating Member	01.08.2022
Date on which the approved draft comes to the Sr.PS/PS	02.08.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	04.08.2022
Date on which the fair order comes back to the Sr. PS/ PS	04.08.2022
Date on which the final order is uploaded on the website of ITAT	04.08.2022
Date on which the file goes to the Bench Clerk	04.08.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	