

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.498/Del/2020
Assessment Year: 2011-12

Sham Sunder Gupta,
H-108, 2nd Floor,
Connaught Place,
New Delhi.

Vs. ACIT,
Circle-7(1),
New Delhi.

PAN: AISPG6871B

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Mithalesh Kr. Pandey, Sr. DR
Date of Hearing	:	14.09.2022
Date of Pronouncement	:	14.09.2022

ORDER

This appeal filed by the assessee is directed against the order dated 29.11.2019 of the CIT(A)-3, New Delhi, relating to Assessment Year 2011-12.

2. At the time of hearing, none appeared on behalf of the assessee nor any adjournment application has been filed. However, we find this matter could be disposed of even in the absence of the assessee. Therefore, we proceed to adjudicate this appeal after hearing the ld. Sr. DR.

3. On careful perusal of the order of the ld.CIT(A), I find the ld. CIT(A) has passed the impugned order *in limine* applying the decisions of the Hon'ble Supreme Court in the case of *CIT vs. BN Bhattacharya (1997) 118 ITR 461 (SC)* and the decision of the ITAT Delhi in the case *CIT vs. Multiplan India Pvt. Ltd.*, reported in *38 ITD 320 (Delhi)*. We also find that the impugned order has been passed by the ld.CIT(A) *ex parte qua* the assessee without giving any final opportunity to the assessee and without deciding the grounds taken by the assessee on merit.

4. The ld. Sr. DR, in all fairness, admitted that the ld.CIT(A) has adjudicated the appeal of the assessee *in limine* and, therefore, the Department has no serious objection if the matter is restored to the file of the CIT(A) for fresh adjudication, after allowing due opportunity of being heard to the assessee.

5. On careful consideration of the submissions of the ld. Sr. DR and on perusal of the order of the ld.CIT(A), I am of the considered opinion that the assessee has not been provided due opportunity of being heard before the ld.CIT(A) and the ld.CIT(A) has also not decided the grounds of appeal on merits and, instead, dismissed the appeal *in limine* which the ld. CIT(A) is not empowered to do. Since the ld.CIT(A) has dismissed the appeal *ex parte* without deciding the grounds taken by the assessee in Form No.35 on merits and dismissed the appeal *in limine*, the order of the CIT(A) is set aside and the appeal