

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

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER &  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.8407/Del/2019  
[Assessment Year : 2016-17]**

Donna Apparels P.Ltd., B-22, Westend, New Delhi-110021. <b>PAN-AACCD2083M</b>	vs	ACIT, Circle-7(2), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Rakesh Gulati, CA	
<b>Respondent by</b>	Shri Shankar Lal Verma, Sr. DR	
<b>Date of Hearing</b>	15.09.2022	
<b>Date of Pronouncement</b>	15.09.2022	

**ORDER**

**PER CHANDRA MOHAN GARG, JM :**

This appeal filed by the assessee against the order of Ld. CIT(A)-3, New Delhi in Appeal No.3/10232/2018-19 dated 23.08.2019 for the assessment year 2016-17.

2. The grounds raised by the assessee are as follows:-

1. *“That the learned Commissioner of Income Tax (Appeals) erred in law and facts of the cases in passing the ex-parte order without affording an fair and proper opportunity of heard.*
- (2) *Without prejudice to above, the learned Commissioner of Income (Appeals) has further erred in law and facts of the case in upholding the addition of Rs.11,70,816/- on account of delayed deposit of employee’s contribution to PF in an arbitrary manner without considering that the same is being paid before filing of the return of income u/s 139(1).*

(3) *That the Ld. Commissioner of Income Tax (appeal) has further not passed the order on the merit of the addition made . The appeal deserve to be set aside also on the ground that even if the ex-parte order was valid, the CIT (A) was obliged to decide on the merit of the addition.*

(4) *Any other ground of appeal at the time of hearing.”*

3. Ld. Sr. DR, in all fairness, agreed to the contention of the Ld. Authorized Representative of the assessee that Ld.CIT(A) has passed impugned first appellate order dated 23.08.2019 *ex-parte* qua the assessee by applying the decision of Co-ordinate Bench of the Delhi Tribunal in the case of *CIT vs Multiplan India Pvt. Ltd. Reported in 38 ITD 320 (Delhi)*. Ld. Sr. DR did not controvert the factual position that the Ld.CIT(A) has dismissed the appeal of the assessee on account of non-compliance without adjudicating the grounds raised by the assessee in Form No.35.

4. In view of the above, we considered that as per mandate of section 250 of the Income Tax Act, 1961 (“the Act”), the First Appellate Authority is duty bound to dispose off all grounds raised by the assessee in Form No.35 even in a situation when he proceeds to adjudicate first appellate *ex-parte* qua the assessee. In the present case, Ld.CIT(A) has not complied with the said requirement of sub-section (6) of section 250 of the Act. Therefore, the impugned first appellate order is set aside and the matter is restored to the file of Ld.CIT(A) for fresh adjudication of appeal after allowing due opportunity of hearing to the assessee. Therefore, Ground No.1 raised by the assessee is allowed. Consequential, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open Court on 15<sup>th</sup> September, 2022.

**Sd/-**

**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(CHANDRA MOHAN GARG)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI