

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

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

ITA No.1203/DEL/2022
Assessment Year: 2012-13

Gulshan Kumar H. No.223/1, Main Bazar, Gohana, Gohana, Haryana - 131301	Vs	ITO Ward-2 Haryana
(APPELLANT)		(RESPONDENT)

Appellant by	None
Respondent by	Sh. Om Prakash, Sr. DR

Date of hearing:	27/10/2022
Date of Pronouncement:	28/10/2022

ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the assessee wherein the correctness of the order dated 23.03.2022 passed by NFAC, Delhi as First Appellate Authority, pertaining to A.Y.2012-13 assessment year is assailed on various grounds including ground No.3 which reads as under :-

“3. The Ld. Commissioner of Income Tax (Appeals) has erred is not providing proper opportunity to file submissions and details. Some of the notices were not received by appellant as portal was not functioning smoothly.”

2. At the time of hearing an adjournment application was moved on behalf of the assessee seeking time. However, considering the record the said request was rejected and it was deemed appropriate to proceed with the present appeal exparte qua the assessee appellant on merits. After hearing the Ld. Sr. DR.

3. The Ld. Sr. DR on relying upon the order.

4. A perusal of the record shows that the appeal filed by the assessee was decided without hearing the assessee. This fact is evident from para-2 of the impugned order. It is further seen that the addition made in the assessment order was confirmed relying on the position of law as considered by the Hon'ble Madhya Pradesh High Court in the case of Tukoji Rao Holkar Vs. CWT223 ITR 480 and CIT Vs. Bhattacharjee 118 ITR 461 (SC) for non representation. On a perusal of page-2 of the impugned order it is seen that apart from challenging the order on the merits of the addition the assessee had also raised

jurisdictional grounds vide No.1, 2 and 3. The issue as per page-4 and para 6 of the impugned has been considered to be “*general in nature*” holding that no specific adjudication was required. The manner of decision making and passing the order it is seen is contrary to the well settled legal jurisprudence. The challenge to the assumption of jurisdiction has to be specifically met. The statute requires the First Appellate Authority to address the issues agitated by bringing on record the reasons for the conclusions drawn. Specific attention is invited to sub section (6) of Section 250 of the IT Act. Thus, holding that the order under challenge is passed in violation of the statutory remit the order is set aside. Accordingly, in order to set right this statutory deficit the impugned order is set aside back to the file of the First Appellate Authority with the direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard to the assessee.

5. While so directing, it is made clear that the assessee in its own interest is advised to cooperate fully and fairly before the First Appellate Authority and not to abuse the trust reposed in him. At the same time it is made clear that in the eventuality of the abuse of the trust reposed the Ld.CIT(A) shall be at liberty to pass an order in accordance with law

on the basis of material available on record. Said order was pronounced in the open court at the time of hearing itself.

6. Accordingly, the appeal filed by the assessee is allowed for statistical purposes.

Said order was pronounced in the open court on 28th October, 2022.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

NEHA, Sr. Private Secretarty
Date:- 28.10.2022

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date	
1.	Draft dictated on		PS
2.	Draft placed before author		PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS		PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk		PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		