

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

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.471/Del/2020
Assessment Year: 2011-12

Anand Misra,
A-62, Defence colony,
New Delhi.

Vs. ACIT,
Circle-30(1),
New Delhi.

PAN: ALYPM5923H

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Kanav Bali, Sr. DR
Date of Hearing	:	02.11.2022
Date of Pronouncement	:	04.11.2022

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 25.09.2019 of the CIT(A)-10, New Delhi, relating to Assessment Year 2011-12.

2. The grounds of appeal raised by the assessee read as under:-

“1. That in facts and circumstance of the case and to law, the Ld. ACIT(Appeals)- 10 erred in upholding the addition of Rs. 39,40,000/- as order passed U/s 250(5) of the Income Tax Act, is invalid, illegal, and ab initio as the statutory provisions have been given a total go bye and/or violated. The Ld. ACIT (appeals)-10 has not given any opportunity of being heard before passing such an order thereby upholding the order passed by the AO u/s 147 rws 143(3).

2. *That the various notices issued by the Ld. ACIT(appeals)-10, as also mentioned in the Impugned Order, were never delivered to the Appellant herein. It is pertinent to submit that the Appellant is no more residing at the New Delhi address as stands mentioned in the impugned Order and has now shifted to Cuttack, Orissa. As a result, the Appellant did not receive the notices set out in the Order of the Ld. ACIT(appeals)-10 dated 25.09.2019 except notice dated 07.08.2019 and was therefore never afforded an effective opportunity of hearing before the said order was passed. The Appellant submits that this amounts to a gross breach of the principles of natural justice and fair play and on this ground the order dated 25.09.2019 passed by the Ld. ACIT(appeals)-10 is liable to be set aside.*

3. *The appellant submits that on 18.09.2019, the Counsel on behalf of the appellant appeared before the Ld. ACIT(appeals)-10 with written submission and the relevant documents supporting the said appeal explaining various deductions claimed by the Appellant. However, on the said date of hearing, the Ld. ACIT(appeals)-10 uprightly refused to hear the counsel representing the appellant and in fact refused the counsel to enter the room. In such circumstances, it was incumbent upon the Ld. ACIT(appeals)-10 to have confronted the appellant with the relevant documents and allowed the appellant to setup an effective defence. This amounts to gross violation of principle of natural justice, (Audi alteram partem) and on this ground alone the impugned order dated 25.09.2019 is liable to be set aside.*

4. *That the Impugned Order dated 25.09.2019 passed by the Ld. ACIT (Appeals)-10, New Delhi is arbitrary, biased, without application of mind and bad in law and in facts and circumstances of the case in so far as it confirms addition of income order passed by the AO. Moreover, despite the counsel appearing on behalf of the Appellant on 18.09.2019 and further being refused to be represented, the Ld. ACIT(appeals)-10, has admittedly proceeded on the wrong premise that the grounds of appeal taken by the appellant therein remained unsubstantiated for want of supporting evidences due to non-compliance of statutory notices issued during the appellate proceedings.*

5. *That Ld. ACIT (appeals)-10 erred in not giving sufficient time to the appellant to provide the necessary and relevant documents in order to substantiate the expenditure incurred by the Assessee during the relevant assessment year and as such erred in enhancing the income of the appellant. Therefore, the Impugned Order dated*

25.09.2019 suffers from gross violation of the principle of natural justice and as such is liable to be set aside.

6. That on the facts and circumstances of case and in law, the Ld. ACIT (appeals) - 10 erred in upholding the decision of the Ld. ACIT, Circle-30(1) by confirming the additions of Rs. 39,40,000/- and addition of Rs. 44,100/- on account of interest on income tax refund, as the order passed by the Ld. ACIT, Circle-30(1) u/s 147 r.w.s. 143(3) of Income Tax Act, 1961 is illegal and void ab initio. It is submitted that the applicable statutory provisions have been given a total go-by thereby rendering the Appellate order as illegal and void. Further, the Ld. ACIT (appeals) -10 did not give the Assessee sufficient opportunity of being heard before deciding on the issue of making an addition or disallowance under section 199 of Income Tax Act, 1961 r.w. Rule 37BA (3) of Income Tax Rules, 1962”

3. None appeared on behalf of the assessee. On perusal of the record, we find that this appeal can be disposed of even in absence of the authorized representative of the assessee. Therefore, we proceed to adjudicate this appeal after hearing the ld. Sr. DR.

4. The assessee, through the grounds of appeal has agitated that the ld.CIT(A) has not provided reasonable and adequate opportunity of being heard to the assessee since many of the notices mentioned in the impugned order were never delivered to the assessee. It was also contended that the ld.CIT(A) has passed his *ex parte* order without giving any final opportunity to the assessee.

5. The ld. Sr. DR, in all fairness, admitted that the ld.CIT(A) has adjudicated the appeal of the assessee *ex parte qua* the assessee, 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.

6. On careful consideration of the above submissions and grounds of appeal taken by the assessee in Form No.36, We are of the considered opinion that the assessee has not been provided due opportunity of being heard before the Id.CIT(A). Since the Id.CIT(A) has dismissed the appeal *ex parte* without allowing the assessee proper opportunity of being heard, the order of the CIT(A) is set aside and the appeal is restored to the file of the CIT(A) at first appellate stage.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 04.11.2022.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 04th November, 2022.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi