

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

**BEFORE,
SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.8043/Del/2019
(ASSESSMENT YEAR 2012-13)**

M/s Fox Mandal & Co. 27, 1 st Floor Babar Lane Bengali Market New Delhi PAN-AAAFF 0687J	Vs.	Asst. CIT Circle-61(1) New Delhi
(Appellant)		(Respondent)

Appellant by	Mr. Deepak Malik, Advocate
Respondent by	Mr. Harpal Singh Kharab, Senior Departmental Representative ("Sr. DR" for short)

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-36, New Delhi [Ld. CIT(A)", for short], dated 26/07/2019 for Assessment Year 2012-13.

Grounds taken in this appeal are as under:

"1. That in view of the facts and circumstances of the case and under the law, the CIT(A) erred by not providing reasonable opportunity of being heard, a must in law, as settled by various courts from time to time, hence, the order so passed is arbitrary, unjust and bad in law.

2. That in view of the facts and circumstances of the case and under the law, the CIT(A) erred in confirming the order passed by AO of disallowing interest paid of Rs. 85,93,622/- alleging that the same has not been incurred for the purpose of business without considering the submissions made by the appellant, which is contrary to the facts on record and therefore, is arbitrary, unjust and bad in law.

3. That in view of the facts and circumstances of the case and under the law the CIT(A) erred in confirming the order passed by AO in adding back following heads of expenditures, without considering/appreciating the submissions made by the appellant.

(i)	Business Promotion	Rs. 3,11,509/-
(ii)	Car Running & Maint	Rs. 5,34,672/-
(iii)	Communication Exp.	Rs. 2,65,413/-
(iv)	Travelling &, Conveyance Exp.	Rs. 3,91,229/-

4. That in view of the facts and circumstances of the case and under the law the CIT(A) erred in confirming the order passed by AO by adding Rs. 2,78,418/- on account of interest u/s 244A alleging that the same has not been credited to profit & loss a/c without, considering the submissions made by the appellant is unjust and bad in law.

5. That the appellant crave to add, amend or delete any ground of appeal at the time of hearing.”

(A.1) In the course of appellate proceedings in Income Tax Appellate Tribunal (‘ITAT’, for short), a letter was filed from the assessee’s side, containing the following submissions:

“In the above matter it is humbly submitted that ex-parte order has been passed by CIT(A), New Delhi against the assessee, on account of rejection of adjournment filed by him being out of Delhi, therefore in the interest of justice the appeal be kindly restored to the file of CIT(A) for fresh adjudication.”

(B) In this case, assessment order dated 30/03/2015 was passed by the Assessing Officer u/s 143(3) of Income tax Act ('IT Act', for short) wherein the total income of the assessee was assessed at Rs.1,28,64,463/- (rounded off to Rs.1,28,64,460/-). Aggrieved, the assessee filed an appeal in the office of learned CIT(A). Vide impugned appellate order dated 26/07/2019, the learned CIT(A) dismissed the assessee's appeal. It is found from perusal of records that the learned CIT(A) passed an *ex-parte* order. The last hearing fixed in the office of the learned CIT(A) was vide notice dated 17/07/2019, whereby hearing was fixed on 26/07/2019. The notice was sent by speed post. On 26/07/2019 an adjournment was filed from the assessee's side but the learned CIT(A) rejected the request for adjournment and proceeded to decide the appeal *ex-parte* qua the appellant assessee. On perusal of the order of the learned CIT(A), we find that she has not discussed the grounds on which the adjournment was sought by the appellant assessee. In the absence of this discussion, learned CIT(A) has failed to establish that rejection of adjournment by the learned CIT(A) was just and proper in the facts and circumstances of the

case. Further, considering the normal time taken by Postal Authorities in service of mail by speed post, the duration of time between date of notice (17/07/2019) and date of hearing (26/07/2019) seems to be inadequate and we are of the view that the inadequate duration of time did not constitute reasonable opportunity to the assessee.

(B.1) Further, we find that the learned CIT(A) has dismissed the assessee's appeal in a summary manner; and has not passed speaking order on the various grounds of appeal. Under section 250(6) of the Income Tax Act, the learned CIT(A) is duty bound to dispose off the appeal stating the points for determination, the decision thereon and the reason for the decision. As the learned CIT(A) dismissed the assessee's appeal in a summary manner without passing a speaking order on the various grounds of appeal, we infer that requirement u/s 250(6) of IT Act was not fulfilled by the learned CIT(A).

(B.2) At the time of hearing before us, the learned Counsel for the assessee submitted that the issues in dispute in the present

appeal may be restored to the file of the learned CIT(A) for passing fresh order in accordance with law after providing reasonable opportunity to the assessee. The learned Senior DR for Revenue relied on the orders of the learned CIT(A) and the Assessing Officer.

(B.2.1) We have heard both sides. We have perused the materials on record. In the light of the foregoing discussion in paragraph (B) of this order, we are of the view that the learned CIT(A) did not provide reasonable opportunity to the assessee in respect of notice of hearing dated 17/07/2019, whereby hearing was fixed on 26/07/2019. Further, we have already noted earlier that learned CIT(A) has failed to establish that rejection of adjournment in respect of hearing fixed on 26/07/2019 by aforesaid notice dated 17/07/2019, was just and proper in the facts and circumstances of the case. We are of the opinion, in view of the foregoing, that rejection of adjournment sought by the assessee, amounted to violation of principle of natural justice. Further, as discussed earlier in the foregoing paragraph (B.1) of this order, the requirement prescribed u/s 250(6) of Income tax Act has not been fulfilled by the learned CIT(A). In view of the foregoing, and in the

specific facts and circumstances of the present appeal before us, we set aside the impugned appellate order dated 26/07/2019 of the learned CIT(A) and we restore all the issues in dispute in the present appeal before us, to the file of the learned CIT(A) with the direction to pass denovo appellate order in accordance with law, after providing reasonable opportunity to the assessee; and further, in conformity with principles of natural justice; and furthermore, having due regard for requirements prescribed u/s 250(6) of IT Act.

(C) For statistical purposes, the appeal is treated as partly allowed.

This order was already pronounced orally on 28th November, 2022 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. Now this order in writing is signed today on 29/11/2022.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 29/11/2022

Pk

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI