

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

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.2560/Del/2022
Assessment Year: 2012-13

Hari Kishan Babbar,
C2/986, Palam Vihar,
Gurgaon,
Haryana – 122017.

Vs. ITO,
Ward-35(4),
New Delhi.

PAN: AAQPB8233Q

(Appellant)

(Respondent)

Assessee by	:	Ms Kavita Saini, CA
Revenue by	:	Shri Om Prakash, Sr. DR
Date of Hearing	:	12.12.2022
Date of Pronouncement	:	12.12.2022

ORDER

This appeal filed by the assessee is directed against the order dated 24.08.2022 of the CIT(A)-26, New Delhi, relating to Assessment Year 2012-13.

2. The Id. Counsel for the assessee submitted that in this case, the Id. 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)*. It was also

submitted that the impugned order has been passed by the Id.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 as per the requirement of section 250 (6) of the Act.

3. The Id. Sr. DR, in all fairness, admitted that the Id.CIT(A) has dismissed 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.

4. On careful consideration of the rival submissions and on perusal of the order of the Id.CIT(A), I am of the considered opinion that the assessee has not been provided due opportunity of being heard before the Id.CIT(A) and the Id.CIT(A) has also not decided the grounds of appeal on merits and, instead, dismissed the appeal *in limine* which the Id. CIT(A) is not empowered to do. The Id. CIT(A) is required to adjudicate the issues come before him on merit and pass a speaking order as per section 250(6) of the Act. Since, in the instant case, the Id.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 impugned order of the CIT(A) is set aside and the appeal is

restored to the file of the CIT(A) at first appellate stage for adjudicating the matter afresh, after allowing due opportunity of being heard to the assessee.

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

Order pronounced in the open court on 12th December, 2022.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 12th December, 2022.

dk

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

Asstt. Registrar, ITAT, New Delhi