

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.7680/Del/2019
(Assessment Year: 2009-10)

JSD Steel P Ltd (formerly CBS Steel (P) Ltd), C/o. M/s. SB Garg & Co, CAs, 20/17, Shakti Nagar, New Delhi (Appellant) PAN: AACCC7004P	Vs. ACIT, Circle-5(2), New Delhi (Respondent)
--	--

Assessee by :	Shri Sachin Kumar, CA
Revenue by:	Shri Jeetendra Kumar Kale, Sr. DR

Date of Hearing	30/11/2022
Date of pronouncement	23/12/2022

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. Heard and perused the record.
2. The appeal is preferred against the order dated 27.07.2019 of Id CIT(A)-2, New Delhi wherein, the Id CIT(A) had dismissed the appeal of the assessee against the impugned assessment order passed u/s 143(3) of the Income Tax Act, 1961 passed by the Id Assessing Officer, ACIT, Circle-5(2) dated 30.12.2016.
3. At the time of hearing it came up that amongst other grounds, the assessee has taken a ground no 6 of not being given due opportunity of hearing and relying ex parte evidence.
4. The perusal of the impugned order of the Id CIT(A) shows that the ground No. 1 of the challenge of assessment order before the Id

CIT(A) was in regard to non service of notice and not giving opportunity of hearing and taking into consideration ex parte evidence. This was adjudicated by the Id CIT(A) with following finding:-

"The appellant has filed a written submission dated 14.11.2018. As non-service of notice was an important issue raised in the ground, the report was called for from the assessing officer vide letter dated 14.11.2018. After that, a reminder was sent vide letter dated 17.01.2019. Final reminder was sent on 10.07.2019 to submit the report/ comments on this issue by 19.07.2019. Reply has not been received in writing except a telephonic message that the case has been transferred out from the present AO. As the appeal is pending since long, the grounds are being decided on the basis of material available on record."

5. The bench is of considered opinion that where the assessee had taken specific plea in regard to reopening of the case of assessment u/s 147/148 that ex parte evidence collected has been relied and the Id CIT(A) has called for remand report from Id AO, and if the Id AO had not replied then the presumption should have been drawn against the AO and accordingly the issue adjudicated. On the contrary what the Id CIT(A) has done is that having failed to receive report/ comments of the Id AO, proceeded to decide the appeal on merits and while deciding the issues on merits again observation were made that appellant could not provide satisfactory explanation to the show cause notice before the Id AO.

6. The bench is of considered opinion that if at all the Id CIT(A) was exercising his co terminus powers then at least an opportunity of hearing in terms of giving opportunity to the assessee to controvert the ex parte evidence relied by the Id AO should have been given. Having failed to do so, the assessee has been prejudiced.

7. Consequently, the ground No. 6, raising aforesaid defect in the proceedings of the Id CIT(A) is sustained. The appeal is allowed for statistical purposes and issue is restored to the files of the Id CIT(A)

with a direction to give an opportunity of hearing to the assessee on the ground raised by the assessee of not providing opportunity of hearing and to lead evidence and failure of Id AO to provide documents/ statement relied upon by the Id AO.

Order pronounced in the open court on 23/12/2022.

-Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 23/12/2022
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi