

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

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 430 /DEL/2022 [A.Y. 2011-12]

&

ITA No. 431 /DEL/2022 [A.Y. 2012-13]

Chequer Marketing Pvt. Ltd., 13/34, 4 th Floor, WEA, Main Arya Samaj Road, Karol Bagh, New Delhi-110005. PAN- AACCC8709M	<u>Vs</u>	Asstt. Commissioner of Income-tax, Central Circle-29, Delhi.
APPELLANT		RESPONDENT
Assessee represented by	Sh. Anunav Kumar, adv.	
Department represented by	Sh. Shankar Lal Verma, Sr. DR	
Date of hearing	31.05.2023	
Date of pronouncement	31.05.2023	

ORDER

PER ANUBHAV SHARMA, JM:

Heard and perused the records.

2. At the time of hearing it transpired that on the last date of hearing on 29.05.2023, the Bench had made following observing:

“It appears from the impugned order that 09 opportunities have been afforded to the Assessee by issuing notices to the Assessee by the Ld. CIT(A) but the Assessee neither appeared nor filed any document/reply and therefore in the constrained circumstances, the Ld. CIT(A) passed the impugned order

The Assessee by filling affidavit claimed that the Assessee initially received a notice 27-01-2020, by which the case was fixed on 13-02-2020 on which date the Assessee sought adjournment for one month and thereafter the CIT(A) though issued several notices for hearing in 2021 but the same never sent or received by the Assessee

Considering the peculiar facts specifically the claim made by the Assessee in affidavit, the ld. DR is directed to verify the facts stated in Assessee's affidavit, by perusing the Appeal Record before the Ld. CIT(A) and to file the status report alongwith copies of notices sent and received.

Case is adjourned to for compliance on 31/05/2023 and for taking cognizance on affidavit filed by the Assessee. Parties informed in open Court.”

3. Amongst other issues on merits, the assessee has raised ground about disposal of appeal by the learned CIT(A) without sufficient service of notice and opportunity of hearing.

4. Report is submitted by the learned DR on the basis of facts reported by the learned CIT(A), which mention that learned CIT(A) while hearing the appeal had issued notice through ITBA Portal on registered e-mail address of the assessee company, as mentioned by the assessee in form no. 35. The report submitted by the learned CIT(A) indicates that for A.Y. 2011-12 notice u/s 250 of the Act was issued on 27.01.2020 for date of hearing 13.02.2020 and for which adjournment

was sought by the assessee/appellant. This corroborates the averments of assessee in the affidavit of Shri Giri Raj Goyal, aged about 82 years, who is Director of the assessee company, wherein it is submitted that except for this notice issued by postal means, no other notice received.

5. Learned AR pointed out that in form no. 35, although the e-mail address of the assessee company was mentioned but in the column meant to indicate, if notices/communication may be sent on email, the assessee company had preferred to specify 'No'. Learned AR submitted that the reason for the same was that the Director is an old man and not acquainted with electronic communications. Thus, it appears that may be notices were issued by the learned CIT(A) on e-mail, but the same were not in the knowledge of assessee company as it had preferred to mention in form no. 35 that notices be issued in physical form only.

6. The learned DR has submitted that it is mandatory to issue notices by e-mail, but Bench is of view that where an option is sought from an assessee in form no. 35, as to mode of service of notice and if assessee prefers to opt for physical notice only, then electronic notice issued cannot be considered to be due issuance and service of the notice. Thus, the Bench is of the considered opinion that assessee company was not given reasonable opportunity of hearing and to contest on merits.

7. **Therefore, ground no. 2 is sustained.** Issues on merit, for both assessment years, are restored to the files of Ld. CIT(A) for giving an opportunity of hearing to

assessee company and decide afresh. Further, learned CIT(A) shall ensure that notices are issued on the postal address of the assessee as provided in form no. 35.

Appeals are allowed for statistical purposes.

Order pronounced in open court on 31.05.2023.

**Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**