

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
DR. B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.1588/Del/2023
[Assessment Year : 2011-12]**

Savitri Srirangam, Sriram’s IAS Tower, 10-B, Pusa Road, Bada Bazar Marg, Old Rajinder Nagar, New Delhi-110060. PAN-BKDPS6606Q	vs	ACIT, Circle-50(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Sombir Kumar, FCA	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	01.08.2023	
Date of Pronouncement	07.08.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order of Ld. CIT(A), National faceless Appeal Centre (“NFAC”), Delhi dated 27.03.2023 for the assessment year 2011-12.

2. The assessee has raised following grounds of appeal:-

1. *“That the order passed by the learned Assistant Commissioner of Income Tax is bad at law, wrong in facts and against principles of natural justice.*
2. *That the learned Assistant Commissioner of Income Tax has erred in levying penalty of Rs. 981000.*
3. *That the Appellant craves the right to add, amend, delete or substitute the Ground of Appeal at any time before the finalization of appeal proceedings.”*

3. At the outset, Ld. Counsel for the assessee submitted that Ld. CIT(A) without giving opportunity of being heard to the assessee, proceeded to dismiss the appeal. He submitted that in the interest of principle of natural justice, the assessee should have been given opportunity for representing his case.

4. On the other hand, Ld. Sr. DR opposed the submissions and supported the orders of the authorities below. He submitted that the assessee has been thoroughly negligent and Ld.CIT(A) has given a finding on fact which is not controverted by the assessee. Therefore, Ld.CIT(A) was justified in passing an impugned order.

5. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find that before Ld.CIT(A), there was no effective representation on behalf of the assessee. Ld.CIT(A) dismissed the appeal of the assessee, by observing as under:-

5.3 “DECISION:- *The Statement of Facts, Grounds of appeal and the material on record have been considered.*

During the appellate proceedings, the appellant has not filed any written submission. In absence of the written submission and evidence, it remained to be unexplained as to how the AO's order is erroneous. If the appellant claims that he is eligible for any claim he should have furnished supporting documents. The appellate proceedings are first line of remedy to those who think that the injustice has been done by the AO. However, the appellant failed to avail the same by non-complying. From the assessment order, it is evident that there was non-compliance of notices before the AO as well and therefore, the AO had to pass the order. During the appellate proceedings also, the appellant has not availed of the opportunities given. Therefore, it is assumed that the appellant is not interested in pursuing his own appeal.

Moreover, the appellant failed to bring on records any facts or documents which can explain how the order of the AO is erroneous.

5.4 In the case of *Anil Goel Vs CIT*, [2008] 306 ITR 212 (Punjab & Haryana), the Hon'ble High Court held as under.

- "4. It is thus obvious on the plain language of section 250 of the Act that date and place of hearing was duly fixed. The assessee was also given notice along with notice to the Assessing Officer. The assessee had ample opportunity to make his submissions by appearing in person or through authorised representative. Despite fixing the case for seventeen hearings, no one had put in appearance nor any justifiable reason for adjournment was given.
5. The Tribunal also found that non-recording of reasons in support of order passed by CIT(A) would not amount to committing any illegality because the CIT(A) has adopted the reasoning advanced by the Assessing Officer and has upheld his order. The judgment of this Court, in the case of *Popular Engineering Co. v. ITAT* [2001] 248 ITR 577, has been rightly relied upon wherein it has been observed that elaborate reasons need not be recorded by the CIT(A) as has been done by the Assessing Officer. The reasons are required to be clear and explicit indicating that the authority has considered the issue in controversy. If the appellate/revisonal authority has to affirm such an order it is not required to give separate reasons which may be required in case the order is to be reversed by the appellate/revisonal authority."

5.5 In the instant case the appellant have not filed return of income u/s 139. Only after confronted with the material indicative of having undisclosed income, the appellant filed return of income on 30.03.2018 declaring total income of Rs. 20,23,510/- for A.Y. 2011-12. The filing of return of income u/s 139 was expired on 31.03.2013. Therefore a return of income filed after five years from time limit allotted u/s 139 cannot be said as a valid return. The appellant's claim before the A.O., that it had declared

income before issue of notice u/s 148 thus holds no water. Further, on the additions made of Rs. 17,40,381/- on account of disallowance of expenses, the appellant conveniently claim that she had misplaced the supporting evidence and in order to avoid litigation she has agreed to pay taxes. Secondly, the appellant before the A.O. relied upon the judgment of Hon'ble Delhi Tribunal in the case of Netambit Value First Pvt Lt Vs DCIT (2018 (3) TMI 36-Hon'ble ITAT Delhi). On perusal of the case, it was noticed that hon'ble Tribunal had allowed relief from penalty where disallowance was made u/s 40a(ia). It was not a case that the payments were doubted rather payments were made without TDS, which attracted disallowance u/s 40a(ia). The case of the appellant is entirely different. The appellant claimed expenses and no details of the expenses were available making the entire expenses as bogus. Thus the case law cited by the appellant before the A.O., was not applicable in the appellant's case. Thus the appellant had not filed the return of income u/s 139 and concealed particulars of income to the extent of 37,63,890/-. Accordingly, penalty levied by the A.O. is upheld. The Ground Nos. 1 & 2 are hereby DISMISSED.”

6. Considering the submissions made at bar and the material placed before us, we are of the considered view that the assessee should have been given adequate opportunity of being heard to represent his case. We, therefore, in the interest of principle of natural justice, hereby, set aside the impugned order and restore the issue to the file of Ld.CIT(A) to decide it afresh after giving adequate opportunity of being heard to the assessee. Grounds raised by the assessee are thus, allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes. Order pronounced in the open Court on 07th August, 2023.

Sd/-

**(DR.B.R.R.KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI