

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE SH. CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.1045/Del/2023
(Assessment Year : 2016-17)

Amit Harit G-15/6, Shastri Nagar, Meerut Uttar Pradesh – 250 004 PAN No. ABZPH 9529 B (APPELLANT)	Vs.	DCIT International Taxation Noida (RESPONDENT)
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Assessee by	Shri Nitin Gulati, Adv.
Revenue by	Shri Sanjay Kumar, Sr. D.R.

Date of hearing:	04.09.2023
Date of Pronouncement:	04.09.2023

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) – 2, Noida ('CIT(A)' in short) dated 03.06.2022 arising from the assessment order dated 18.11.2018 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2016-17.

2. The grounds of appeal raised by assessee reads as under:

- “1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of Rs.70,84,034/- as made by Ld. AO by recording incorrect facts and findings and without considering the submissions of assessee.*
- 2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not admitting the additional evidence produce by the assessee during appeal proceedings.*
- 3. That in any case and any view of the matter, action of Ld. CIT(A) in not reversing the action of Ld. AO in making the impugned addition and framing the impugned*

assessment order which is contrary to law and facts, void ab initio, beyond jurisdiction, and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.

4. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other. ”*

3. The assessee in the captioned appeal has raised several grounds assailing the order of CIT(A). However, it is noticed that one of the substantive ground raised by the assessee whereby, the assessee seeks to impugn the order of the CIT(A) on account of alleged violation of principal of natural justice and disposal of first appellate order without admitting additional evidences of vital nature placed before the CIT(A).

4. When the matter was called for hearing, the Learned Counsel for the assessee submitted at the outset that the assessee is a non-resident and the addition of Rs.70,84,034/- has been wrongly made which is exempt from taxation. It was submitted that; (i). the assessment was completed under Section 144 of the Act without actual service of notices on the assessee and disregarding the status of the assessee as non-resident. The assessee in the instant case worked as seafarer and was employed at the ship and received salary towards the same from ‘Executive Ship Management Pte. Ltd., Singapore’ . The Salary was received by the assessee in US dollars which was transferred and converted into Indian rupee in his NRE Savings Bank Account with HSBC Bank. The income so derived by the assessee is exempted from taxation; (ii). the income to the assessee did not accrue or arise in India and thus not taxable under Indian Income-tax Act; (iii). the salary received by the assessee in the capacity of Seafarer while being on a foreign vessel is not taxable as the same neither accrues or arises in India; (iv). notice under Section 142(1) of the Act dated 09.10.2018 was actually delivered to the assessee on 19.10.2018 as per the own assertion of the AO, however, the date of hearing fixed was 17.10.2018 i.e. before the date of delivery of notice. The assessee being a non-resident was not having the knowledge of such notices and could

not comply; (v). the evidences under Rule 46A were filed before CIT(A) to support his case for such income being not taxable viz; passport showing period of stay, Seaman Book record, statement of NRE Saving Account, serving of employer, pay slips etc.; (vi). the CIT(A) obtained remand report from the AO but however rejected the plea of the assessee for admission of additional evidences filed and denied any relief by a summery order in violation of natural justice.

5. The Learned Counsel thus points out that, in effect, no realistic opportunity was made available to the assessee resulting in *ex parte* order by the AO and summery order not allowing by the CIT(A). It was thus submitted that the order of the lower authorities are vitiated from the violation of principle of natural justice.

6. It was reiterated that when the matter was carried out to the CIT(A), all the relevant details were filed on the issues and leave of the CIT(A) was sought for admission of additional evidences under Rule 46A of the Income Tax Rules. The CIT(A) however, rejected the prayer of the assessee for admission of additional evidences in blatant transgression of nature justice despite the fact that assessee does not stay in India for most part of the year and therefore, the non compliance was deliberate. The Learned Counsel thus urged for suitable relief in the matter.

7. Per contra, the Learned DR for the Revenue, relied upon the order of the authorities below but however fairly concurred with the proposal of the Bench for setting aside the matter to unable the AO to reframe the assessment order *de novo* in accordance with law.

8. We have carefully considered the rival submissions and perused the case records. A perusal of sequence of event shows that the Assessing Officer was equally at fault in giving a very short period of notice to the assessee and in one instance, the delivery of the notice itself is subsequent to the date fixed for compliance. The factum of the assessee not being resident in India has not been kept in mind for providing sufficient

time. From the case records, it is apparent that opportunity granted to the assessee was illusory. Order passed in contravention of natural justice is thus a nullity in the eyes of law.

8.1 Judicial propriety demands that a fair opportunity should be given to the assessee to enable it to explain its case. The breach of sacrosanct principle of natural justice is fundamental defect and goes to the root of the process of framing assessment. Pertinent here to say that, the judicial proceedings and all the incidences of such proceedings are expected to be observed without laxity before the proceedings were determined. The statutory duties conferred upon the AO is in the nature of a trust. Short notices given to a non-resident for compliance is thus improper and unjust.

8.2 When seen in conjunction, it is yet more difficult to perceive that any statutory authority expected to rectify such apparent violation in granting opportunity would rather refuse to admit the additional evidences moved before him. Needless to say that spirit of Rule 46A of Income-tax Rules, enabling the assessee to place additional evidences before the CIT(A) are founded on a doctrine of legitimate expectations and principle of natural justice. It is indeed the sacrosanct application of the first appellate authority to have ensured that an effective opportunity is granted to the assessee for presenting his case. The assessee is unlikely to derive any benefit by alleged non-compliance before the AO. This apart, Clause (b) of Rule 46A itself clearly spells out that an assessee would be entitled to produce additional evidences before CIT(A) where he was prevented by sufficient cause from producing the evidences which was called upon to produce by the AO. The case of the assessee squarely falls within the circumstances enumerated under Rule 46A. Be it as it may, the powers of CIT(A) are not fettered or circumscribed by Rule 46A for admission of additional evidences *per se*. In view of the mandate of overriding provision of Section 250(4) of the Act also, the situation existing in the case as narrated above clearly warranted admission of additional evidences by the CIT(A). The CIT(A) having called the remand report was wholly unjustified in rejecting the addition of additional evidences despite demonstrable

circumstances preventing the assessee from appropriate response before the AO. We thus find apparent fallacy in the action of the CIT(A).

9. The order of the CIT(A) on the subject matter of appeal is thus set aside and the issues involved are restored to the file of AO for *de novo* adjudication in accordance with law after making or causing such enquiry by the AO as he may consider expedient. The AO shall also examine the status of the assessee claimed to be a non-resident and determine the issue in the light of the factual matrix. The assessee shall be at liberty to make his submissions before the AO on all points and adduce such evidences as may be considered expedient.

10. In the light of observations made above, the order of CIT(A) appealed against, is set aside and the subject matter of appeal are restored back to the file of AO for fresh adjudication in accordance with law after giving reasonable opportunity to the assessee.

11. In the result, the captioned appeal of the assessee is allowed for statistical purposes.

Order was pronounced in the open court on 04.09.2023

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Date:- 04.09.2023