

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2860/Del/2022
Assessment Year: 2017-18

Anand Motor House,
162-A, Guru Nanak Auto Market,
Kashmere Gate,
Delhi – 110 006.

Vs

DCIT,
Special Range
AS AO, Delhi,
New Delhi.

PAN: AAAFA0328D

(Applicant)

(Respondent)

Assessee by	:	Ms Mansi Jain, CA
Revenue by	:	Shri Kanav Bali, Sr. DR
Date of Hearing	:	07.11.2023
Date of Pronouncement	:	16.11.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal is preferred by the Assessee against the order dated 22.11.2022 of the National Faceless Appeal Centre (NFAC), Delhi, hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.CIT(A), Delhi-12/10280/2019-20 arising out of an appeal before it against the order dated 17.12.2019 passed u/s 143(3) of the Income Tax Act, 1961

(hereinafter referred as 'the Act') by the DCIT, Special Range-12 AS AO, Delhi (hereinafter referred to as the Ld. AO).

2. Heard and perused the record. At the time of hearing of the matter, it came up that amongst other grounds as raised by the assessee, there is also a ground No.2 alleging that the ld.CIT(A) as first appellate authority has not taken cognizance of the documents and evidences filed by the assessee. It is also alleged that the ld.CIT(A) has not taken into consideration the written submissions filed by the assessee. It also came up during the hearing that the assessee had alleged before the ld.CIT(A) that the impugned assessment order dated 17.12.2019 was passed without giving opportunity to file relevant submissions and evidences before the ld. AO, but Ld. CIT(A) has not appreciated the averments of assessee.

3. As we appreciate the matter, it comes up that the AO had issued notice u/s 142(1) of the Act on 16.12.2019, copy of which is available at page 147 of the paper book, by which the assessee was asked to furnish relevant accounts and documents sought by the AO by previous notice u/s 142(1) of the Act. The assessee was directed to submit the same by 18.12.2019. It appears that without waiting for the date fixed, the AO passed the assessment order u/s 143(3) of the Act on 17.12.2019 and when we appreciate the order, it comes up that the AO mentions of the fact that initial notice was issued on 09.08.2019 followed by notices of 07.10.2019, 22.11.2019 and 08.12.2019. There is no reference of the

notice dated 16.12.2019 available at page 147 of the paper book. It appears that on the basis of notice dated 08.12.2019 only the AO passed order dated 17.12.2019 while the assessee was under the impression, in furtherance of notice dated 16.12.2019, that the assessee has to respond by 18.12.2019. Which assessee did too.

4. The Id.CIT(A) seems to have shown no indulgence on this aspect. It further comes up that before the Id.CIT(A) also the assessee had responded to the notice u/s 250 of the Act by filing submissions along with attachments vide response dated 09.02.2021, as made apparent by the acknowledgement available at page 154 of the paper book. The submissions which was provided to the Id.CIT(A) vide this acknowledgement and the document referred in the same are also made available to us in the paper book.

5. However, the Id.CIT(A) seems to have not considered any of the submissions or evidences and has proceeded to decide the issues primarily observing that the assessee has not willingly participated in the proceedings and no evidences were furnished in spite of opportunities. The observations of the Id.CIT(A) that the appellant is not bothered for the fate of the appeal and the appeal has been filed merely to file an appeal seems to be erroneous as otherwise it is established that the assessee has duly responded to the notice u/s 250 of the Act by filing submissions with relevant evidences, of which not an iota is discussed.

6. Thus, we have no hesitation in concluding that the ld. AO and thereafter, the ld.CIT(A), both have failed to take into consideration the submissions and evidences of the filed by the assessee, thus, denying due opportunity of hearing which is necessary for just decision by any quasi judicial authority. Consequently, we are inclined to allow the ground No.2 and the sub-grounds of other grounds on merits where the assessee had alleged that the ld.CIT(A) has made confirmations without giving any consideration to the evidences filed. **The appeal of the assessee is allowed for statistical purposes** and the issue on merit is restored to the file of ld. AO for passing a fresh order taking into consideration the submissions and evidences of the assessee. Needless to say that an opportunity by calling for the submissions and evidences be given to the assessee.

Order pronounced in the open court on 16.11.2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 16th November, 2023.

dk

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi