

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1067/Kol/2023
Assessment Year: 2016-17**

Kanchan Vanijya Pvt. Ltd. 13/3, Mahendra Roy Lane, Kolkata-700046. (PAN: AABCK3408L)	Vs.	ACIT, Circle-11(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Anil Kochar, Advocate
Respondent by : Shri Abhijit Kundu, CIT. DR

Date of Hearing : 14.12.2023
Date of Pronouncement : 23.01.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2023-24/1055807444(1) dated 06.09.2023 passed against the assessment order by Income Tax Department, National Faceless Assessment Centre, Delhi u/s.143(3) r.w.s. 263 read with section 144B of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 30.03.2022 for AY 2016-17.

2. Grounds raised by the assessee are reproduced as under:

"1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that the Ld. CIT (A) erred in confirming the action of the A.O. in passing an invalid/illegal order on alleged grounds.

3. For that the Ld. CIT (A) erred in not adjudicating the Ground No.1, 2 & 3 relating to validity and/or legality of the order passed by the A.O.

4. For that the Ld. CIT (A) ought to have held that the order passed by the A.O. is bad-in-law, non-est, without application of mind which renders the assessment liable to be quashed.

5. For that the Ld. CIT (A) erred in confirming the addition of Rs.1,64,860/- being the amount of filing fees towards increase in share capital on alleged grounds.

6. For that the Ld. CIT (A) erred in confirming the disallowance on account of Sales Tax paid for earlier years, though quantified during the year, on alleged grounds.

7. For that the Ld. CIT (A) erred in confirming the disallowance of Rs.99,789/- towards loss on sale of Motor Car on alleged grounds.

8. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

3. Before us, Ld. Counsel for the assessee without making any submission on the merits of the case has strongly emphasized on the quashing of the impugned assessment order on account of failure on the part of the Ld. AO to comply with the principles of natural justice while making the assessment and passing the impugned assessment order.

4. In this respect, brief facts of the case are that original return of income was submitted on 07.09.2016 reporting total income at Rs.1,22,98,747/-. The case having been selected for scrutiny notice u/s 143(2) followed by notices u/s 142(1) were issued and complied with. After consideration of all the details and evidences adduced, the A.O. passed an order u/s 143(3) on 20.12.2018 determining total income of the assessee at Rs.1,38,60,273/-. The Ld. CIT after going through the records initiated proceeding u/s. 263 since he observed that the order passed was prejudicial to the interest of revenue and accordingly, passed an order u/s 263 on 30.03.2021. The Ld. CIT set aside the assessment order to the file of the A.O. with a direction to pass a fresh order after considering the following issues: -

(a) Expenditure of Rs.1,64,860/- towards Filing Fees for increase in authorized share capital .

(b) Prior period expenditure relating to Sales Tax amounting to Rs.7,60,602/-.

(c) Loss on sale of Motor Car Rs.99,789/- being capital in nature.

4.1. The Ld. A.O. in order to give effect to the order of the Ld. Pr. CIT-4, Kolkata issued a notice u/s 142(1) on 26.01.2022 and having not received any response to the notice, the Ld. A.O. passed an order by disallowing all the three items of expenditure claimed and for which the Ld. Pr. CIT has set aside the assessment. The assessee is aggrieved with the action of the Ld. A.O. in making disallowance without conducting any inquiry though notice has been issued u/s 142(1) and having not delved upon the issue properly as directed by the Ld. Pr. CIT and is in appeal.

4.2. We note that assessee had raised specific grounds before the Ld. CIT(A) to challenge the violation of principles of natural justice on account of inadequate opportunity given by the Ld. AO while making the assessment and passing the impugned assessment order. We note that Ld. CIT(A) has not adjudicated upon these grounds of appeal and has merely stated that *“ground nos. 1, 2 and 3 are in the form of statements/contention which do not call for any specific adjudication”*.

4.3. Contrary to the observation and finding given by Ld. CIT(A), Ld. Counsel for the assessee placed on record vital facts to demonstrate violation of principles of natural justice in making the assessment. He submitted that notice u/s. 142(1) was issued on 26.01.2022 requiring compliance by the assessee on or before 08.02.2022. Assessee could not comply with the said notice. Thereafter, Ld. AO issued a show cause notice on 30.03.2022. The time stamp on the said notice recorded is 17:30:25 (IST) requiring the assessee to comply by 23:59 hrs. of 30.03.2022 by submitting response through registered e-filing account at www.incometax.gov.in either by accepting the proposed

variation or filing a written reply, objecting to the proposed variation or if required, after filing written reply requesting for personal hearing so as to make oral submissions to present the case. In the said notice in para 3, it is noted that assessee can request for video conferencing and on approval of the said request, personal hearing shall be conducted exclusively through video conference. In para 4, it is noted that in case no response is received by the given time and date, the assessment shall be finalised as per the draft assessment order. Ld. Counsel thus, pointed out that the difference between time of issue of this show cause notice and its compliance requirement by the assessee is 6:30 hrs. i.e. from 17:30 to 23:59 (IST).

4.4. Ld. Counsel then referred to the impugned assessment order which has been passed by the Ld. AO on 30.03.2022 u/s. 143(3) read with section 263 and 144B. The said order is digitally signed with the date and time stamp of 30.03.2022 and 22:32:59 (IST). On these set of facts, Ld. Counsel submitted that Ld. AO has completed the assessment and passed the impugned order prior to the time, though very minimal of 6:30 hrs., which was provided to the assessee despite the fact that the limitation was available upto 31.03.2022. Thus, Ld. Counsel strongly argued that the Ld. AO had issued only one notice u/s. 142(1) on 26.07.2022 and then at the fag end of the limitation, issued a show cause notice on 30.03.2022 as a mere empty formality, asking the assessee to furnish the details on the very same date and complete the assessment to pass the impugned order on the same date but before the time permitted to the assessee to make the compliance. Such conduct on the part of the Ld. AO is against the violation of natural justice in providing adequate opportunity of being heard to the assessee for making the impugned assessment and the impugned assessment order passed thereafter is liable to be quashed as bad in law, non-est.

5. Per contra, Ld. CIT, DR asserted that due opportunity was given to the assessee by notice u/s. 142(1) on 26.01.2022 which the assessee failed to comply with. Thus, the necessary compliance requirement for making the assessment in passing the impugned assessment order were duly complied with by the Ld. AO. According to him, at best, in the interest of justice, the matter may be restored to the file of Ld. AO for fresh assessment by affording reasonable opportunity of being heard.

5.1. In the rejoinder, Ld. Counsel for the assessee strongly opposed to proposal of restoring the matter to the file of Ld. AO since it will tantamount to encouraging the inefficient approach adopted at his end by extending the limitation otherwise prescribed in the Act, causing harassment to the assessee for no fault on its account. According to him, such practices must by all means, be discouraged and the impugned order be quashed on account of gross violation of principles of natural justice.

6. We have heard the rival contentions and perused the material available on record. The moot question which needs to be adjudicated is whether principles of natural justice have been violated and prejudice caused to the assessee owing to such violation. Adherence to principles of natural justice is recognized by all civilized States and is of supreme importance when a quasi judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. Natural Justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. These principles are well settled. These are the rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by

a judicial, quasi judicial and administrative authority while making an order affecting those rights.

6.1. We are concerned with the legality of procedure followed in making the impugned assessment by providing reasonable opportunity of hearing which should not be an empty formality. “*Audi Alterm Partem*” means “*Let the other party be heard*”. According to these principles, all the parties to a dispute should be allowed to be heard and present their case. In other words, the principle asserts that no party should be condemned unheard. Each party has the right to a fair hearing. Authorities are bound to ensure that a fair chance is provided to the parties to defend themselves.

6.2. In the present set of peculiar facts as noted above, Ld. AO afforded an opportunity to the assessee on 30.03.2022 whereby he himself allowed a time window of 6:30 hrs. and without waiting for this time window passed the assessment order on the same date making the additions/disallowances contested in the appeal. There was no adequate opportunity for the assessee to make its compliance even though the notice itself stated that assessee could request for personal hearing and also of video conferencing. The manner in which Ld. AO gave an opportunity to the assessee is nothing but an empty formality even though the limitation was available upto 31.03.2022.

6.3. Hon’ble High Court of Madras in the case of Govt of India Vs. Maxim A. Lobe [1991] 190 ITR 101 had observed at page 114 as under:

“One principle which is now well settled by a catena of authorities is that even if the statute is silent with regard to grant of hearing to the person affected but the decision taken by the authority involves civil consequences or adverse consequences, at least a minimal hearing is essential and not only desirable. An order suffering from non-observance of the principles of natural justice would, under the circumstances, be void and is nullity.”

7. In the light of the above stated facts, judicial precedent and deliberation on the principles of natural justice, we are inclined to set

aside the impugned order passed by the Ld. AO since in the present case opportunity that was granted to the assessee was not realistic in nature. Assessee had been deprived of its right to appear and request for personal hearing as well as for video conferencing. Therefore, we hold that the impugned assessment order is in gross violation of principles of natural justice and liable to be set aside. On this score alone, the appeal of the assessee deserves to be allowed.

8. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 23rd January, 2024

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 23rd January, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order
Assistant Registrar
ITAT, Kolkata Benches, Kolkata