

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI NARINDER KUMAR, JUDICIAL MEMBER**

I.T.A. No.910/DEL/2022
Assessment Year 2016-17

Fiserv India Private Limited Ground, First, Second and Third Floor, Trion Business Park, Nagar Road, Vadgoansheri, Pune Maharashtra.	Vs.	The Assistant Commissioner of Income Tax, Circle-791) C.R. Building, IP Estate New Delhi
TAN/PAN: AACCR0787L		
(Appellant)		(Respondent)

Appellant by:	Shri Vishal Kalra, Advocate Ms. Sumisha Murgai, AR Mr. Kashish Gupta, AR		
Respondent by:	Shri Bhogendra Prasad, CIT-DR		
Date of hearing:	07	08	2024
Date of pronouncement:	07	08	2024

ORDER

PER : NARINDER KUMAR, J.M.

Assessee- a private Limited company- has challenged order dated 09.03.2022 passed by Learned CIT(A), Delhi-44.

2. Vide impugned order, Learned CIT(A) has dismissed the appeal filed by the assessee in respect of assessment year 2016-17.

3. Before Ld. CIT(A), the assessee had challenged assessment order dated 6.2.2020 passed by Assistant Commissioner of Income Tax, Circle 9(1), New Delhi, under section 143(3) read with section 144C(3) of the Income Tax Act, 1961.

Vide assessment order dated 6.2.2020, total income of the assessee was computed and as against the declared income of Rs.73,19,78,280/-total income of the assessee was assessed at Rs. 73,79,04,860/-.

3.1 In addition thereto, directions for charging of interest under sections 234A, 234B, 234C and 234D of the Act, 1961, were issued and even penalty proceedings u/s 271(1)(c) of the Act were separately initiated.

4. The assessee company is engaged in the business of providing software development services, conversion, data entry and implementation of software to its AE-M/s Fiserv Global Services Inc.

5. It may be mentioned here that on a reference being made to the DCIT, TPO-1(2)(2), New Delhi, for determining arm's length price under section 92CA(3) of the Act, in respect of international transactions entered into by the assessee, during the financial year 2015-16.

5.1 DCIT, TPO vide order dated 31.10. 2019 passed under section 92 CA of the Act, examined the issue involved and determined the difference in arm's length price of the international transactions of the assessee with its associated enterprises at Rs.32,00,470/-.

5.2 On its basis, Assessing Officer made an addition of Rs. 32,00,470/-.

5.3 Vide assessment order, the Assessing Officer also disallowed a sum of Rs.11,56,521/-; Rs. 3,26,160/-; Rs. 196,875/-

and Rs. 10,46,549/- as described therein.

6. Feeling aggrieved by the above said assessment order, assessee preferred appeal before Learned CIT(A), but did not get any respite there.

6.1 And, that is how, the assessee is before this Appellate Tribunal by way of present appeal.

7. Arguments heard. File perused.

8. Learned AR for the assessee has put forth only one submission i.e. that the impugned order passed by Learned CIT(A) is an ex-parte order, same having been passed without affording reasonable opportunity to the assessee-appellant.

Learned AR has pointed out that in reply to the last two notices dated 25.10.2021 and 1.2.2022 issued by the office of Learned CIT(A), adjournment was sought on behalf of the assessee-appellant, as material was to be collected by the assessee from multiple sources, but in the impugned order, it has not been correctly recorded that there was no request for adjournment from the appellant for the said two dates, and as such, the impugned order deserves to be set aside, and the matter may be remanded to Learned CIT(A) for decision afresh, after providing reasonable opportunity of being heard, to the appellant.

9. As finds recorded in para 4 of the impugned order, the office of Learned CIT(A) issued first notice to the appellant on 22.1.2021. However, the appellant sought adjournment. Same was granted, as requested.

9.1 Second notice dated 9.2.2021 was issued listing the matter for 26.2.2021. Again, the appellant sought adjournment and the appeal was adjourned.

9.2 Third notice dated 3.3.2021 was issued for 1.4.2021, but none appeared on behalf of the appellant. Neither there was any request for adjournment nor any reply was filed on its behalf.

9.3 However, another notice dated 25.10.2021 was served upon the appellant for 10.11.2021. Again, none appeared before Learned CIT(A). The appeal was, however, adjourned.

9.4 Ultimately, notice dated 1.2.2022 was issued for 10.2.2022, but even this time, neither there was any response nor appearance on behalf of the appellant.

9.5 Learned CIT(A) proceeded to dispose of the appeal, after having observed that it appeared that the appellant was not interested in pursuing the appeal.

9.6 That is how, the appeal came to be dismissed on merits, upholding the assessment order in toto.

10. Learned DR has not controverted the submission that in reply to the last two notices dated 25.10.2021 and 1.2.2022 adjournment was sought on behalf of the assessee-appellant by way of written requests. He has not opposed the submission for remand of the matter for decision of the appeal afresh by Learned CIT(A), after providing another opportunity to the appellant.

11. As noticed above, upon service of notices to the appellant issued twice, appellant sought adjournment, and Learned CIT(A)

allowed the request.

12. From the impugned order, it is clear that despite service of 3rd notice issued thereafter, none appeared on behalf of the appellant. Even there was no request for adjournment.

13. Record reveals that when the last mentioned two notices dated 25.10.2021 and 1.2.2022 were issued to the assessee, as per documents available at page 45 and 51 of the Paper book submitted on behalf of the appellant, adjournment was sought on behalf of the appellant, in reply to the said two notices. Adjournment was sought on the ground that material was to be collected from various sources.

Therefore, Learned CIT(A) was not right in observing in the impugned order that there was no request for adjournment from the assessee in reply to the abovesaid 2 notices dated 25.10.2021 and 1.2.2022. Rather, this observation is against record.

Had the two requests been considered and rejected, then the matter would have been otherwise. But, it is not case of the department that said two requests were considered or rejected or that the appellant or its AR was apprised of rejection of the requests.

It appears that the two written requests from the assessee seeking adjournment skipped from the notice of Learned CIT(A). But, the fact remains that the appellant could not get reasonable opportunity of being heard.

In this situation, we find merit in the only submission on behalf of the appellant for one opportunity to the assessee-

appellant for appearance before Ld. CIT(A) to put forth its submissions and substantiate its claim by producing entire relevant record.

14. Taking into consideration the issues involved and the grounds of appeal raised by the appellant in Form No.35 before Learned CIT(A) and the other material available on file, we deem it a fit case to provide opportunity to the appellant of being heard for effective adjudication of the said grounds, which have been decided vide impugned order in absence of the appellant.

Result

15. In view of the above discussion, the appeal is disposed of for statistical purposes, and as a result, the appeal before Learned CIT(A) shall stand restored to its original number,

15.2 Learned CIT(A) to afford reasonable opportunity to the appellant of being heard and decide the appeal afresh.

File be consigned to the record room, after the needful is done by the office.

Order pronounced in the open Court on 07/08/2024

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: 07 /08/2024

Prabhat

Sd/-

**[NARINDER KUMAR]
JUDICIAL MEMBER**