

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA NO. 4117/MUM/2015 : (A.Y : 2010-11)**

Log5 Communications Pvt. Ltd. Vs. DCIT, TDS-(2)(1),  
303, Saurabh Cooperative Society, Mumbai (Respondent)  
Andheri Kurla Road, Chakala,  
Andheri (E), Mumbai 400 093  
**PAN : AABCT9950C (Appellant)**

**Assessee by : Shri Rohit Singh  
Revenue by : Shri Deepak Ripote**

**Date of Hearing : 20/07/2016**

**Date of Pronouncement : 19/08/2016**

**ORDER**

**PER G.S. PANNU, AM :**

The captioned appeal by the assessee is directed against the order of CIT(A)-59, Mumbai dated 01.04.2015, pertaining to the Assessment Year 2010-11, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 07.03.2013 under section 272A(2)(k) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, assessee has raised the following Grounds of appeal :-

*"1. The order passed by the Honorable Commissioner of Income Tax (Appeals) is bad in law, contrary to legal pronouncements and same be quashed.*

2. *The Hon'ble Commissioner of Income Tax (Appeals) has erred in stating the facts that none attended nor was written submissions filed. The A.R. of the appellant had filed an adjournment letter with the Hon'ble Commissioner of Income Tax (Appeals) on date March 05, 2015 for hearing at a later date. However, the order was passed without giving sufficient opportunity to the appellant to prove its stand.*

3. *The Hon'ble Commissioner of Income Tax (Appeals) has erred in not considering the facts and reasons placed before the Assessing Officer for delay in quarterly e-TDS statements by unavailability of the competent accountant in the appellant office.*

4. *The Hon'ble Commissioner of Income Tax (Appeals) has erred in not considering the facts placed before the Assessing Officer that the deductee has already brought TDS credit on the basis of quarterly e-TDS statements filed.*

*Your appellant submits that the demand confirmed by Hon'ble CIT(A) is unjust and uncalled for and be deleted now."*

3. The first and foremost plea of the appellant is that the CIT(A) has passed the impugned order without giving sufficient opportunity to the assessee to state its case. In para 3 of the order, the CIT(A) has noticed that in response to the notice of hearing none attended and nor was any written submission filed on behalf of the assessee. Accordingly, she has proceeded to dismiss the appeal of the assessee by upholding the action of the Assessing Officer.

4. Before us, the learned representative for the assessee pointed out that assessee had filed an adjournment application before the CIT(A) on the date of hearing, i.e. 5.3.2015, but the order has been

passed *ex parte* without giving an opportunity to the assessee to state its stand. Moreover, it is also pointed out that the CIT(A) has not even considered the facts and other reasons placed before the Assessing Officer for delay in quarterly e-TDS statements and, therefore, the CIT(A) has unjustly dismissed the appeal of the assessee.

5. On the other hand, the Ld. DR has merely relied upon the order of the CIT(A) without controverting the assertion put forth by the learned representative for the assessee.

6. Having considered the rival submissions, in our view there is a clear manifestation of denial of natural justice inasmuch as sufficient opportunity has not been granted by the CIT(A) before proceeding to dispose of the appeal of assessee. In the interest of justice and fair play, we deem it fit and proper to restore the matter back to the file of CIT(A) who shall adjudicate the appeal afresh after allowing assessee a reasonable opportunity of being heard as per law.

7. In the result, appeal of the assessee is partly allowed, as above.

Order pronounced in the open court on 19<sup>th</sup> August, 2016.

Sd/-

**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Date : 19<sup>th</sup> August, 2016

\*SSL\*

Sd/-

**(G.S. PANNU)**  
**ACCOUNTANT MEMBER**

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "I" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai