

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-1', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 3746/Del/2015 : Asstt. Year : 2010-11

Gulab, C/o-V. B. Arya, Advocate, H.No. 7, Friends Colony, Jharsa Road, Gurgaon-122001 (Haryana)	Vs	Income Tax Officer, Ward-1(2), HSIDC Building, Vanijya Nikunj, Udyog Vihar, Phase-V, Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. APGPG6992Q		

Assessee by : Sh. Manish Chandna, CA

Revenue by : Ms. Anima Barnwal, Sr. DR

Date of Hearing : 28.07.2016	Date of Pronouncement : 29.07.2016
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ORDER

This is an appeal by the assessee against the order dated 21.04.2015 of Id. CIT(A)-1, Gurgaon.

2. The only grievance of the assessee in this appeal relates to the sustenance of addition of Rs.34,14,318/- made by the AO.

3. Facts of the case in brief are that the assessee filed the return of income on 15.09.2010. However, the assessment was framed by the AO *ex-parte* u/s 144 of the Act by making an addition of Rs.32,90,000/- which was the amount of cash deposits in the saving bank account

maintained in Oriental Bank of Commerce, Village Behrampur, Gurgaon. The AO also made another addition of Rs.1,24,318/- which was on account of difference in the interest income shown by the assessee at Rs.3,25,682/- and reflected in Form No. 26AS at Rs.4,50,000/-.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished additional evidences and requested for admission of those evidences by stating that he is an illiterate Cultivator completely unaware of the provisions of law and was under the bonafide belief that any receipts from transactions pertaining to agricultural land was outside the purview of taxes. The Id. CIT(A) did not admit the additional evidences by observing that there was no reasonable cause which prevented the assessee from not filing the additional evidences during the course of assessment proceedings. The Id. CIT(A) confirmed the additions made by the AO.

5. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that neither the AO nor the Id. CIT(A) allowed an opportunity of being heard to the assessee. Therefore, the addition made by the AO and sustained by the Id. CIT(A) was not justified.

6. In her rival submissions the Id. Senior DR strongly supported the orders of the authorities below and further submitted that the assessee

was provided a number of opportunities but he did not bother to comply any of those. Therefore, the addition made by the AO was rightly sustained by the Id. CIT(A).

7. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that the AO framed the assessment *ex-parte* and the Id. CIT(A) refused to admit the additional evidences by observing that those were not filed before the AO during the course of assessment proceedings. It is well settled that nobody should be condemned unheard as per the *maxim "audi alteram partem"*. I, therefore, considering the totality of the facts, deem it appropriate to set aside this case back to the file of the AO to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 29/07/2016)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 29/07/2016

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR