

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC-2' NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER**

**I.T.A. No. 2500/Del/2016**

**Assessment Year: 2009-10**

Sh. Hanuman Parsad Saraf  
Asirwad,  
Near City Police Station,  
Gali Chirpal, Bhiwani-127021  
Haryana  
(PAN: AUJPS2854H)

VS. ACIT, BHIWANI  
Income Tax Office,  
Huda Complex,  
City Centre  
Bhiwani-127021  
Haryana

**(ASSESSEE)**

**(RESPONDENT)**

**Assessee by:** SH. Pawan Jain, Adv. & Sh. N.K.  
Jain, Adv.

**Revenue by:** SH. Umesh Chander Dubey, Sr.DR

**Date of Hearing on** : **22/09/2016**

**Order Pronounced on** : **22/09/2016**

**PER H.S. SIDHU, JM**

**ORDER**

This appeal is filed by assessee against the order dated 15.3.2016 passed by the Ld. CIT(A), Faridabad relating to Assessment Year 2009-10 on the following grounds:-

1. That the Ld. CIT(A) has gone wrong in dismissing the appeal in a summary manner for want of appearance of appellant, without considering the statement of facts and the law explained therein without adjudicating all the grounds of appeal and by adjudicating the grounds should have held:-

- (i) That the initiation of Reassessment proceedings was on account of change of opinion and was not valid in law.
  - (ii) That the disallowance of expenditure of Rs. 1,87,205/- was against law.
  - (iii) That Rs. 9,44,1231- was not assessable as business• income in change of opinion, instead of correctly assessed as income from capital gain
  - (iv) Charging of interest u/s 243B was not valid in law.
2. That non-compliance of notice dated 15/02/2016 for 29/02/2016 was not served before the date fixed for hearing due to Jat agitation in Haryana and notice dated 113/2016 for 14/03/2016 was also not delivered to the appellant or his counsel and they were not aware of the date of hearing if the notice if would have been delivered there would have been no non compliance because the counsel of the assessee on that date appeared before the Ld. CIT(A) on 14/03/2016 in another appeal, non appearance was not intentional but was on account of non receipt of notice by appellant or his counsel.
3. The Ld. CIT(A) was not the jurisdictional CIT(A) and the assessee had no information regarding the transfer of appeal without any opportunity for hearing.
4. That the appellant crave leave to add amend or rescind any ground of appeal on or before hearing the appeal.

In the circumstance the appeal may kindly be allowed.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

3. Ld. Counsel of the assessee has stated that Ld. CIT(A) has not given sufficient opportunity, hence, the issues in dispute may be set aside to the file of the Ld. CIT(A) to decide the same afresh, under the law, after giving adequate opportunity of being heard. He himself made a statement that he will appear before the Ld. CIT(A), as and when the Bench directed to do so.

4. On the contrary, Ld. DR opposed the request of the Ld. Counsel of the assessee.

5. I heard both the parties and perused the records. I have gone through the order passed by the revenue authorities especially the impugned order and I find that Ld. CIT(A) has issued the notice to the assessee, but the assessee did not attend the proceedings. For ready reference, I am reproducing the relevant para nos. 4 to 6 of the impugned order as under:-

*“4. During the course of appellate proceedings, a number of opportunities provided to the appellant, but they remained un-complied with. The following chart provides the details of the opportunities provided to the appellant during the course of appellate proceedings.*

<b><u>Date</u></b>	<b><u>Event</u></b>
15.02.2016	Notice u/s 250 was issued for 29.02.2016.
29.02;2016	None attended nor any written submissions were filed.
01.03.2016	Fresh notice issued for hearing on 14.03.2016.
14.03.2016	None attended nor any written submission were filed.

*As is evident from the previous pages the appellant has been given more than sufficient opportunities and notices but the appellant*

*has failed to substantiate his claim in any manner. Both the notices were serviced on the appellant, which is evident from the fact the notices have not been returned back to this office. Moreover in the notice the appellant was given the opportunity to send his written submissions through email, even then the adjournment application or written submissions have not been received. The relevant part of the notice is as below:*

*“If you are not interested to be present, you are requested to send your written submissions on my email [manumalik92@gmail.com](mailto:manumalik92@gmail.com). This is the last opportunity which is given to you. In this regard no adjournment will be given. If no response is received from you side, then your case will be decided according to papers placed on file. (written in Hindi)*

*6. Hence, after a careful consideration of these facts on record, and in the absence of any rebuttal offered by the appellant despite repeated opportunities during the course of appellate proceedings, I hold that the addition has been rightly made by the AD on account of income from other sources in the absence of the appellant furnishing any books of accounts, bills vouchers etc. before the AD. Thus in view of these facts, the appeal of the appellant is dismissed.*

*7. In the result, the appeal is Dismissed.”*

6. Keeping in view of the notice issued to the assessee and the time granted by the Ld. CIT(A) to the assessee, I am of the view that sufficient opportunity has not been given by the Ld. First Appellate Authority to the assessee for substantiating its claim before the Ld. CIT(A) which is not sustainable in the eyes of law and against the natural justice. Hence, I am of the view that in this case the issues in dispute needs to be remitted back to the file of the Ld. CIT(A) to decide the same afresh, as per law. Accordingly, the issues in dispute are

set aside and restored back to the file of the Ld. CIT(A) and the Ld. CIT(A) is directed to consider the issues in dispute afresh after giving adequate opportunity of being heard to the assessee. Therefore, as requested by the Ld. Counsel of the assessee, the Assessee is directed through his Counsel to be present before the Ld. CIT(A) on **27.10.2016 at 10.00 AM** and fully cooperate with the Ld. CIT(A), did not take any unnecessary adjournment and file all the necessary papers before him to substantiate his case. It is made clear that no notice shall be issued to the Assessee, because this order has been pronounced.

7. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the Open Court on 22/09/2016.

**SD/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

*Date 22/09/2016*

**“SRBHATNAGAR”**

**Copy forwarded to: -**

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches