

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-3' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-5668/Del/2015
(ASSESSMENT YEAR-2009-10)**

M.M. Industries, C/o-M/s.RRA TAXINDIA, D-28, South Extension, Part-I, New Delhi-110049. PAN-AALFM2320G (APPELLANT)	vs	ITO (OSD), Range-II, Faridabad. (RESPONDENT)
--	----	--

Appellant by	Sh. Somil Agarwal, Adv. & Sh.Abhishek Anand, Adv.
Respondent by	Sh.B.Ramanajaneyulu, Sr.DR

Date of Hearing	10.08.2016
Date of Pronouncement	17.10.2016

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 30.10.2014 of CIT(A)-2, Faridabad pertaining to 2009-10 assessment year on various grounds including Ground No.7 which reads as under:-

7. *“That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in upholding the action of the Ld. A.O. in passing the impugned order without giving adequate opportunity of being heard.”*

2. Addressing the reasons for non-appearance before the CIT(A),it was submitted by the Ld.AR that the assessee had engaged a counsel who for reasons best known to him did not inform the assessee that he was not appearing. Thus, on account of some friction with the counsel, the assessee remained unrepresented. Accordingly, the limited prayer of the Ld.AR was that the impugned order be set aside and the assessee be given an opportunity of being heard as

solely on account of the fault of the counsel, the assessee remained unrepresented and the addition made by the AO which had been challenged in appeal before the CIT(A) were sustained *intoto* dismissing the appeal of the assessee.

3. Ld. Sr. DR opposed the prayer of the assessee and it was his submission that the additions made by the AO which have been sustained by the CIT(A) deserve to be upheld.

4. I have heard the rival submissions and perused the material available on record. It is seen that the assessee returned an income of Rs.2,02,981/-. As a result of the additions made by the AO the assessment was concluded at an income of Rs.10,47,527/-, These additions were challenged in appeal by the assessee. As per the recording made in the impugned order the assessee was represented by Mr.Sanjeev Bansal, CA who initially sought some time and thereafter stopped appearing. Accordingly, in the absence of any argument on facts or law the finding of the Assessing Officer was considered to be correct. In the afore-mentioned peculiar facts and circumstances, considering the limited prayer of the assessee that an effective opportunity of being heard may be provided. I find that in the peculiar facts of the present case and in the interests of substantial justice, it deserves to be allowed. Right to be heard is an important right to which a party who is faced with an adverse view is entitled to "*Audi alteram partem*" is one of the most famous and celebrated Rule of Natural Justice. The principles of natural justice are those which have been laid out by the Courts as being the minimum protection of the rights of an individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. A careful

perusal of the consistent judgements of the Apex Court would show that it has consistently been held that the Rules of natural justice are not embodied rules and the said phrase is not and cannot be capable of a precise definition. The underlying principle of natural justice evolved under the common law is to check arbitrary exercise of power by the State or its functionaries. Accordingly, the principle by its very nature implies the duty to act fairly i.e. fair play in action must be evident at every stage. Fair play demands that nobody shall be condemned unheard.

4.1. In the celebrated judgement of the Apex Court in the case of A.K.Kraipak – vs- Union of India (1969) 2 SCC 262, it is observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The said rules are means to an end and not an end in themselves and though it is not possible to make an exhaustive catalogue of such rules however it can be readily said that there are two basic maxims of natural justice namely “*audi alteram partem*” and “*nemo judex in re sua*”. In the present facts of the case we are concerned with the maxim “*audi alterm partem*” which again may have many facets two of them (a) notice of the case to be met; and (b) opportunity to explain. Their Lordships have cautioned that these rules cannot be sacrificed at the altar of the administrative convenience or celebrity. Accordingly in view of the above, the impugned order is set aside and for the purposes of granting an effective opportunity of being heard, the issues are restored to the file of the CIT(A) with a direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. While so directing, it is made clear that the opportunity so provided it is hoped is utilized by the assessee in good faith as

failing which the Ld.CIT(A) would be justified to pass a speaking order on the basis of material available on record.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

The order is pronounced in the open court on 17th October, 2016.

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI