

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER  
AND  
SH.O.P.KANT, ACCOUNTANT MEMBER**

**I.T.A .Nos.-6189 to 6191/Del/2013  
(ASSESSMENT YEAR-2002-03)**

|  |    |   |
|--|----|---|
| Pragati Finsec Ltd.,<br>204, Triveni Plaza, 17A/56,<br>Karol Bagh, New Delhi-110008.<br>PAN-AAACP4524B<br><b>(APPELLANT)</b> | vs | ITO,<br>Ward-14(3),<br>New Delhi<br><b>(RESPONDENT)</b> |
|--|----|---|

|                    |                                  |
|--------------------|----------------------------------|
| <b>Assessee by</b> | <b>Dr. Ram Samujh, Adv.</b>      |
| <b>Revenue by</b>  | <b>Ms. Anima Barnwal, Sr. DR</b> |

|                              |                   |
|------------------------------|-------------------|
| <b>Date of Hearing</b>       | <b>14.06.2016</b> |
| <b>Date of Pronouncement</b> | <b>22.06.2016</b> |

**ORDER**

**PER DIVA SINGH, JM**

These three appeals have been filed by the assessee assailing the correctness of the separate orders dated 15.07.2013 passed by the CIT(A)-XVII, New Delhi pertaining to 2002-03 assessment year in the quantum proceedings and penalty proceedings u/s 271(1)(b) and 271(1)(c) pertaining to the same assessment year.

2. The Ld.AR appearing on behalf of the assessee inviting attention to the impugned orders in each of these three appeals submitted that the orders passed under challenge are ex-parte orders wherein the limited prayer of the assessee is that the issues may be restored to the file of the CIT(A). Support was drawn from the order dated 10.10.2014 in ITA No.4320/Del/2010 pertaining to 2001-02 AY wherein on similar facts and circumstances the issues were restored in order to afford a reasonable opportunity of being heard. It was

his submission that the assessee remained unrepresented for no fault of its own as the new management was under the impression that all tax matters would be attended to by the old management who had the requisite papers. Inviting attention to para 2 of the said order it was submitted that he was ready to give his oral undertaking incase the issue is restored to the CIT(A) that the assessee would participate in the proceedings. For ready-reference, the specific para relied upon is reproduced hereunder:-

2. *“Inviting attention to the impugned order it was submitted by the Ld. AR that the assessee could not be heard as the notice which may have been sent remained unrepresented on account of the management problems. Referring to Paper Book page 57 to 59 para 4 to para 6 of the same, **it was submitted that the new management had taken over from the old management on the understanding that the old management would get the income tax proceedings completed which condition was not fulfilled as a result of which the assessee remained unrepresented. The Ld. AR gave his personal undertaking stating that in case the issue is restored to the CIT(A), the assessee would participate in the proceedings as admittedly** the impugned order was passed ex-parte. The Ld. Sr. DR, Sh. Devi Sharan Singh had no objection to the said request of the assessee considering the peculiar facts and circumstances of the case.”*  
**(emphasis provided)**

3. The Ld. Sr. DR, Ms. Anima Barnwal considering the material available on record and the arguments that non-representation has occurred on account of the old management not following up the income tax proceedings submitted that the assessee should not be allowed to abuse the procedure. Subject to that she had no objection if the issue is restored on the clear understanding that the assessee shall participate this time.

4. We have heard the rival submissions and perused the material available on record. It is seen that the Co-ordinate Bench on identical facts and circumstances in ITA No.4230/Del/2010 restored the issue back to the file to the CIT(A) with the following direction:-

3. *“We have heard the rival submissions and perused the material available on record. In the light of the submissions advanced, we deem*

*it appropriate to restore the issue back to the file to the CIT(A) with the direction to decide the same in accordance with law by way of speaking order. Taking note of the fact that the “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.*

*3.1. 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 alteram partem” which again may have many facets, two of them are (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. The assessee has raised ground No.-1 & 2 in regard to the opportunity of being heard agitated before us and considering the submissions of either side where in the sole issue agitated before us is pertaining to granting of opportunity of being heard which admittedly has not been made available to the assessee we are inclined to accept the prayer of the assessee on a careful consideration of the legal position thereon. Accordingly the ground No.-1 & 2 raised by the assessee is allowed and the remaining grounds are restored back to the file of the CIT(A) with the direction to decide the same in accordance with law after giving the assessee a reasonable opportunity of being heard. Looking at the facts of the present case, we deem it appropriate to add that it is hoped that the assessee utilizes the opportunity so granted by responsibly and meaningfully participating in letter and spirit in the proceedings as the remedies available in law are not to be abused and Courts take a very serious view where opportunities so granted are mis-utilized. The issue is restored in the interests of substantial justice. It is hoped that the opportunity so provided shall not be abused by the assessee and therefore, the grounds are being allowed.”*

5. Respectfully following the precedent, we set aside the impugned orders in each of these appeals and restore the issues back to the file to the CIT(A) taking

the oral undertaking given by the Ld. AR on record that the assessee shall make full and compliance before the said authority. While so directing it is hoped that the opportunity so provided to the assessee shall not be abused and the opportunity so provided in good faith in the interests of substantial justice is used effectively and completely as falling which the Ld. CIT(A) shall be at liberty to pass a speaking order in accordance with law on the basis of material available on record. Considering the fact that the assessment has been made u/s 144 of the Act the assessee may seek permission to move fresh evidence in support of its claim before the CIT(A).

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

**The order is pronounced in the open court on 22 of June, 2016.**

**(O.P.KANT)  
ACCOUNTANT MEMBER**

**(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