

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: "SMC-1" NEW DELHI**

BEFORE SHRI N.K.SAINI, A.M.

**ITA no. 128/Del/2014
Assessment Year:- 2008-09**

Sh. Gaurav Malhotra
C 9, 2nd Floor, Nawada
Housing Complex
Opp. Metro Pillar no.790
Uttam Nagar, Main
Najafgarh road
New Delhi 110 059

vs. ITO, Ward 26(3)
New Delhi

PAN: ALEMP 7401 L

(Appellant)

(Respondent)

Appellant by : Shri C.S.Anand, Adv.
Respondent by : Sh. V.R.Sonbhadra, Sr.D.R.
Date of Hearing: 13th June, 2016
Date of Pronouncement: June, 2016

ORDER

This is an appeal filed by the Assessee directed against the order dated 16.12.2013 of Ld.CIT(A)-XVIII, New Delhi pertaining to the Assessment year (A.Y.) 2008-09 on the following grounds.

"1.1 The order of the learned Commissioner of Income Tax(A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in confirming the addition made by the Assessing officer who has passed the order without going through the details as well as documentary evidence filed during the course of assessment proceeding and without giving a reasonable opportunity of being heard.

1.3 *The learned Commissioner of Income Tax has erred in dismissing the appeal without going through the fact that the share transaction of Rs 1,70,000/- is part of books of accounts of the assessee and deduction of Rs 20,000/- claimed u/s 80C is substantiated with the documentary evidence.*

1.4 *The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal.”*

2. From the above grounds it is gathered that the grievance of the assessee relates to the ex parte order passed by the Ld.CIT(Appeals) and confirming the addition of Rs.1,70,000/- and not granting the deduction amounting to Rs.20,000/- u/s 80C of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’).

3. The facts of the case in brief are that the assessee filed a return of income on 22.4.2008 declaring an income of Rs.1,18,960/-. However the assessment was framed by the Assessing Officer (A.O.) at an income of Rs.2,98,460/- by passing the ex parte order dt. 24.12.2010 u/s 144 of the Act.

3.1. Against the said order the assessee preferred an appeal before the Id.CIT(A) who dismissed the appeal ex parte and confirmed the additions made by the A.O.

3.2. Now the assessee is in appeal before me.

4. The Ld.Counsel for the assessee submitted that neither the A.O. nor the Ld.CIT(A) appreciated the facts in right perspective even when all the relevant material was placed on record in support of the claim related to share transactions of Rs.1,70,000/-, which has been added by the A.O. and in support of the claim for deduction u/s 80C of the Act for a sum of Rs.20,000/-. He requested to remand the case back to the file of the A.O. for proper verification and adjudication.

5. In his rival submissions the Ld.D.R. supported the order of the authorities below and further submitted that the assessee did not cooperate and appeared neither before the A.O. nor before the Ld.CIT(A), therefore, there was no other alternative except to pass the respective orders ex parte.

6. I have considered the submissions of both the parties and carefully gone through the material available on record. In the present case it is an admitted fact that the assessment order by the A.O. as well as the impugned order by the Ld.CIT(A) have been passed ex parte. It is well settled that nobody should be condemned as unheard as per the maxim "audi alteram partem". I therefore deem it appropriate to remand this case back to the file of the A.O. to be adjudicated afresh, after affording due and reasonable opportunity of being heard to the assessee in accordance with law. The assessee is also directed to cooperate and not to seek undue or unwarranted adjournments.

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

Order pronounced in the Open Court on 13th June, 2016.

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

Dated: the 13th June, 2016

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Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
- 5.DR;
- 6.Guard File

By Order

Asst. Registrar