

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

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
I.T.A .No.-2946/Del/2016
(ASSESSMENT YEAR-2011-12)**

Hemant Kumar, Prop. M/s. Raj Trading Co., Shop No.17, Shri. Ram Trade Centre Main Road, Vill.- Bhishanipura, Sector-58, Noida. PAN-BFGPK5952M (APPELLANT)	Vs	ITO, Ward-1(2), Noida. (RESPONDENT)
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Assessee by	Sh.K.P.Garg, CA
Revenue by	Sh.Anil Kumar Sharma, Sr.DR
Date of Hearing	04.10.2016
Date of Pronouncement	07.12.2016

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 31.03.2016 of the CIT(A)-1, Noida pertaining to 2011-12 on various grounds. However, at the time of hearing, the parties were heard only in respect of Ground No.1 which reads as under:-

1. *"The learned CIT(A) has erred on facts and in law in upholding the impugned order u/s 143(3) of the learned assessing officer which is contrary to law, devoid of jurisdiction, passed without application of mind, is against equity and justice and facts of the assessee and material on record."*
2. The facts relatable to the said ground are that aggrieved by the additions made by the Assessing Officer to the returned income of Rs.9,36,530/- wherein the assessment was concluded at an income of Rs.35,47,137/- the assessee challenged the additions made by way of disallowance u/s 40(a)(i); addition u/s 68 and disallowance of commission expenses before the CIT(A). As per para 3 of the impugned order, various opportunities were given to the assessee. The CIT(A) records that despite the fact that request for time was moved by a person who did not have a Power of Attorney in his favour time was granted and even then the assessee remained unrepresented. Finally in the absence of any representation on behalf of the assessee, the additions made by the AO were confirmed by the CIT(A).
3. Aggrieved by this, the assessee is in appeal before the ITAT. Mr. K.P.Garg, CA appearing on behalf of the assessee submitted that during this specific period, the CIT(A), Noida himself was not present and though it is recorded that case was fixed on various times,

it is not correct as the assessee was present on each of the dates and infact the CIT(A) was not there and infact no specific notices were also issued for any date. Accordingly, it was his limited prayer that the assessee is serious in pursuing the appeal and requests an opportunity of being heard by the CIT(A). The prayer for remand was not objected to by the Ld.Sr.DR. After considering the submissions of the parties before the Bench and on a perusal of the material available on record, the prayer made by the Ld.AR is accepted and the impugned order is set aside and the issues are restored back to the file of the CIT(A) with a direction to provide an effective opportunity of being heard to the assessee. The Ld.AR gave his oral undertaking that the assessee shall fully participate in the proceedings. While so directing, it is made clear that incase the opportunity provided in good faith is abused then the CIT(A) would be at liberty to pass a speaking order on the basis of material available on record. Accordingly, the impugned order is set aside and the issues are restored back to the file of the CIT(A) with a direction to pass a speaking order in accordance with law.

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

The order is pronounced in the open court on 07th of December, 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