

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

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A. Nos. 1558 & 1559/Del/2011
Assessment Years: 2005-06 & 2006-07**

M/s Mac Overseas Pvt. Ltd.,
D-193, Okhla Industrial Area,
Phase-I, New Delhi – 20
(PAN: AADCM1175E)

Vs. ITO, Ward 6(1),
CR Building,
New Delhi

(ASSESSEE)

(RESPONDENT)

Assessee by: Shri Sunil Mathur
Revenue by: Shri P. Dam Kanunjna, Sr. DR

Date of Hearing on : 26/11/2015
Order Pronounced on: 01/12/2015

PER H.S. SIDHU, JM

ORDER

These appeals are filed by assessee against the separate orders passed by the Ld. CIT(A), New Delhi relating to Assessment Years 2005-06 & 2006-07. Since the issues involved in these appeals are common and identical hence, they are being consolidated and disposed of by this common order for the sake of convenience, by dealing with assessment year 2005-06.

2. The grounds raised in the ITA No. 1558/Del/2011 (AY 2005-06) read as under:-

- “1. The order is bad in law, as it has been passed in gross violation of principles of Natural justice.

2. The Ld. AO in the given facts and circumstances has erred in treating the income of the assessee as income from house property and income from other sources as against the business income as claimed in the return and consequently not allowing the various expenditure as claimed.
 3. The Ld. AO has erred in not allowing the interest on loan taken for the renovation of property against the house property income.
 4. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal.”
3. The grounds raised in the ITA No. 1559/Del/2011 (AY 2006-07) read as under:-

- “1. The order is bad in law, as it has been passed in gross violation of principles of Natural justice.
2. The Ld. AO in the given facts and circumstances has erred in treating the income of the assessee as income from house property and income from other sources as against the business income as claimed in the return and consequently not allowing the various expenditure as claimed.
3. The Ld. AO has erred in not allowing the interest on loan taken for the renovation of property against the house property income.
4. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal.”

4. The facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

5. At the time of hearing, Ld. A.R. of the Assessee stated that the Ld. CIT(A) has dismissed the Appeal filed by the assessee ex parte without affording sufficient opportunity to the assessee. He requested that the issue in dispute may be set aside to the file of the Ld. CIT(A) to decide the same afresh, under the law, after giving full opportunity to the assessee. He further undertakes on behalf of the assessee that he will fully cooperate in the appellate proceedings and ensured that he will not take any unnecessary adjournment.

6. On the other hand, Ld. Sr. DR relied upon the orders passed by the Ld. CIT(A) and stated that the sufficient opportunity has been given to the assessee by the Ld. CIT(A), but assessee remained non-cooperative. Therefore, he requested that the impugned order may be upheld.

7. We have heard both the parties and perused the records, especially the order of the Appellate Authority. We are of the considered view that the request made by the Ld. Counsel for the assessee seems to be genuine, because the impugned order passed by the Ld. CIT(A) is ex parte order, without providing sufficient opportunity to the assessee and without serving the proper notice upon the assessee. We find that Ld. CIT(A) has issued the Notice to the assessee seven times, but on two times Ld. Counsel for the Assessee filed an Application for adjournment which was granted by the Ld. CIT(A). For the sake of convenience, the relevant findings at para no. 2.0 4.0 at pages 1 & 2 of the impugned order of the Ld. CIT(A) is reproduced as under:-

“2.0 Against the impugned assessment order, the appellant has filed statement of facts and Ground of appeal along with Form No. 35. The appellant has been provided with

opportunities of being heard, details of which are given as under:-

<i>Sl.No.</i>	<i>Date of issue of notice</i>	<i>Date of hearing</i>	<i>Remarks</i>
<i>1</i>	<i>26.8.08</i>	<i>22.9.08</i>	<i>Nobody attended.</i>
<i>2</i>	<i>25.11.08</i>	<i>2.12.08</i>	<i>Nobody attended.</i>
<i>3</i>	<i>18.12.08</i>	<i>30.12.08</i>	<i>Nobody attended but letter dated 30.12.08 received requested for adjournment for the reason that the appellant's counsel is out of station. Final adjournment granted for 13.1.08.</i>
<i>4.</i>		<i>13.1.09</i>	<i>Again letter dated 13.1.09 received requested for adjournment for the reason that the appellant's counsel is out of station. Adjournment granted for 21.1.09.</i>
<i>5.</i>		<i>21.1.09</i>	<i>Nobody attended.</i>
<i>6.</i>	<i>10.2.09</i>	<i>23.2.09</i>	<i>Nobody attended.</i>

3.0 The above facts show that the appellant is not interest to pursue its appeal filed against the assessment order dated 31.12.07. Even the adjournment letters received twice in this office on 30.12.208 and 13.1.09 stated the same reasons i.e. "our counsel is out of city" which shows the casual attitude of the appellant. As there is no response from the appellant, I have no other option but to confirm the additions made by the AO.

4.0 In the result, the appeal is dismissed."

7.1 After perusing the aforesaid impugned order of the Ld. CIT(A), we find that Ld. CIT(A) has not passed a speaking order. He summarily dismissed the appeal by holding that as there is no response from the appellant, he has no other option but to confirm the additions made

by the AO. In our considered opinion, Ld. CIT(A) has erred in this regard. Ld. CIT(A) should have adjudicated the issue on merits. It is a settled law that even the administrative orders have to be consistent with the rules of natural justice. Hence, we are 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, Ld. CIT(A) is directed to consider the issues in dispute afresh and pass a proper and speaking order considering the merits of the case. Needless to add that the assessee should be given adequate opportunity of being heard.

8. In the result, both the appeals filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 01/12/2015.

Sd/-

[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

Date 01/12/2015

"SRB"

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches