

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-III', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 4929/Del/2016 : Asstt. Year : 2009-10

Sh. Ramesh Bhatia, 1058/14, Sector-14, Gurgaon-122001	Vs	Income Tax Officer, Ward-71(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ABBPB8740J		

Assessee by : Sh. Rajiv Saxena, Adv.

Revenue by : Sh. S. K. Jain, Sr. DR

Date of Hearing : 15.11.2016	Date of Pronouncement : 17.11.2016
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ORDER

This is an appeal by the assessee against the order dated 11.12.2015 of Id. CIT(A)-21, New Delhi.

2. Following grounds have been raised in this appeal:

“1. That the learned Commissioner of Income Tax (Appeals) has grossly erred in law and on facts in dismissing the appeal of the appellant ex parte and without adjudicating the grounds of appeal raised in the memo of appeal as such, order passed being in contravention of provisions of section 250(6) of the Income Tax Act, is liable to be set aside for adjudicating the grounds of appeal raised before him.

1.1 That the learned Commissioner of Income Tax (Appeals) has grossly erred in law and on facts in failing to appreciate that as per provisions contained

in Sec. 250(6) of the IT Act, it was the duty of the learned Commissioner of Income Tax (Appeals) to state the points arising in the appeal, the decision of the authority thereon and the reasons for such decision.

1.2 That the learned Commissioner of Income Tax (Appeals) has grossly erred in law and on facts in disposing off the appeal ex-parte which is clearly against the principles of natural justice, and hence order of the learned Commissioner of Income Tax (Appeals) is liable to be set aside.

2. That the learned Commissioner of Income Tax (Appeals) has grossly erred in law and on fact in disposing of the appeal ex-parte and thereby upholding the order of assessment framed under section 143(3) of the Act at an income of Rs. 17,09,453/- as against the returned income of Rs. 1,54,239/-.

2.1 That the learned Commissioner of Income Tax (Appeals) has erred in failing to appreciate that additions made in the order of assessment of Rs. 15,55,214/- is unsustainable in law and is liable to be deleted.”

3. The main grievance of the assessee in this appeal relates to the dismissal of the appeal *ex-parte* by the ld. CIT(A).

4. Facts of the case in brief are that the assessee filed the return of income on 31.03.2010 declaring an income of Rs.1,54,239/- which was processed u/s 143(1) of the Income

Tax Act, 1961 (hereinafter referred to as the Act). Later on, the case was selected for scrutiny. The AO observed at page no. 2 of the assessment order dated 21.12.2011 that the assessee was asked vide order sheet dated 08.11.2011 to provide evidence and source of cash deposited, on 15.11.2011 when the case was fixed for hearing. On the said date neither anybody attended nor informations were filed. The AO framed the assessment at an income of Rs.17,09,453/- by making the various additions which included a sum of Rs.15,53,126/- addedu/s 68 of the Act.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) who dismissed the appeal *ex-parte* in *limine*.

6. Now the assessee is in appeal. The Id. Counsel for the assessee at the very outset stated that neither the AO nor the Id. CIT(A) appreciated the facts in right perspective and did not consider the various documents furnished by the assessee. He requested to set aside the case back to the file of the AO to be adjudicated after providing due and reasonable opportunity of being heard to the assessee.

7. In his rival submissions the Id. DR opposed the contention of the Id. Counsel for the assessee.

8. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the ld. CIT(A) dismissed the appeal of the assessee *ex-parte* in *limine* and had not discussed the issues on merit. Similarly, the AO has also not provided due and reasonable opportunity of being heard to the assessee. It is well settled that nobody should be condemned unheard as per *maxim "audi alteram partem"*. I, therefore, keeping in view the principles of natural justice deem it appropriate to remand this issue back to the file of the AO to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 17/11/2016)

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

Dated: 17/11/2016

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR