

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

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

ITA No. 4376/Del/2014
Assessment Year: 2009-10

SH. UMESH GARG,
C/O MALIK & CO. (ADVOCATES)
305/7, THAPAR NAGAR,
MEERUT CITY.
(PAN: AFGPG0404B)

VS. ITO, WARD 2(4)
MEERUT
AAYAKAR BHAWAN,
BHANSALI GROUND,
MEERUT

(APPELLANT)

(RESPONDENT)

Assessee by : SH. SANJAY MALIK, ADV.
Department by : SH. UMESH CHAND DUBEY, SR. DR.

ORDER

PER H.S. SIDHU, JM

This appeal has been filed by the Assessee against the order dated 28.3.2014 of the Ld. CIT(A), Meerut relating to assessment year 2009-10.

2. The grounds raised by the assessee read as under:-

1. That on the last two date of hearing on 18.3.2014 and 28.3.2014, adjournment was sought because of unavailability of the counsel due to death of his father. On facts and circumstances of the case the appellant was prevented by a reasonable cause in not representing the matter before the Ld. CIT(A). Thus there was no warrant to dismiss the appeal without

affording opportunity of hearing and representation for effective adjudication of the grounds on merits.

2. That the additions made by the AO and sustained by the Ld. CIT(A) without proper and effective adjudication were illegal, without jurisdiction and untenable on facts and in law.
3. That on facts and in law, the issues / grounds of appeal deserve to be restored for adjudication by the CIT(A) after affording opportunity of hearing.
4. That additional ground may please be permitted to be taken before the Bench.

3. 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.

4. Ld. Counsel of the assessee stated that the Ld. CIT(A) has passed the order against the principles of natural justice by way of ex parte order in not providing sufficient opportunities to the assessee.

5. On the other hand, Ld. DR relied upon the orders of the authorities below.

6. We have heard both the parties and perused the records. It was the contention of the assessee's counsel that Ld. CIT(A) has dismissed the Appeal by not providing sufficient opportunities to the assessee which is against the principle of natural justice. We further find that Ld. CIT(A), has given his finding in the impugned order 28.3.2014 vide para no. 2 at page no. 4 of his order. The said relevant paras are reproduced as under:-

"2. *Following dates of hearing were allowed to the appellant:-*

<i>Date of issue of notice</i>	<i>Date fixed for hearing / adjourned date</i>	<i>Remarks</i>
<i>24.12.2013</i>	<i>08.1.2014</i>	<i>Adjournment application was</i>

		<i>filed.</i>
<i>8.1.2014</i>	<i>27.1.2014</i>	<i>No compliance</i>
<i>10.2.2014</i>	<i>24.2.2014</i>	<i>None attended</i>
<i>27.2.2014</i>	<i>18.3.2014</i>	<i>Adjournment application was filed.</i>
<i>18.3.2013</i>	<i>28.3.2013</i>	<i>Appellant once again filed.</i>

3. *From the above it is evident that more than sufficient opportunities of being heard have been allowed to the appellant. On the several dates fixed for hearing, the appellant filed adjournment application and the case was adjourned. On these dates, either none attended or adjournment application was filed. This implies that the appellant is not interested in pursuing the appeal for the reasons best known to him. Since, sufficient opportunity being heard have been given to the appellant, no further adjournment can be granted. Therefore, the appeal is disposed off on the basis of material evidence on the record.*
4. *Since the appellant has not furnished any details and evidences against the additions made by the AO in the assessment order. Therefore, in the absence of the same, it is held that the AO was justified in making additions. The same are hereby confirmed. Grounds of appeal are dismissed.*
In the result, both appeals are dismissed."

6.1 After perusing the aforesaid finding of the Ld. CIT(A), we are of the considered view that that Ld. CIT(A) has passed a non-speaking and exparte order, which is not sustainable in the eyes of law. Therefore, in the interest of justice, we set aside the issues in dispute to the file of the Ld. CIT(A) to decide the issues in dispute afresh, in accordance with law, after giving adequate opportunity of being heard to the parties and

pass a speaking order. However, the Assessee is also directed to fully cooperate with the Id. CIT(A) and produce all the documents before him to substantiate his claim and not to take any unnecessary adjournment.

7. In the result, the Appeal filed by the Assessee stands allowed for statistical purpose.

Order pronounced in the Open Court on 16/12/2016.

SD/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

SD/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated: 16/12/2016

SR BHATNAGAR

Copy forwarded to: -

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

By Order,

ASSISTANT REGISTRAR

