

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

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-2692/Del/2016
(ASSESSMENT YEAR-2008-09)**

Bhupinder Singh, 5/3/4, Geeta Colony, Delhi-110031. PAN-ASOPS2492N (APPELLANT)	Vs	ITO, Ward-58(2) (Old Ward-36(1), Vikash Bhawan, New Delhi. (RESPONDENT)
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Assessee by	None
Revenue by	Sh.F.R.Meena, Sr.DR
Date of Hearing	10.11.2016
Date of Pronouncement	06.01.2017

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 18.02.2016 of CIT(A)-19, New Delhi pertaining to 2008–09 assessment year on various grounds. The grievance of the assessee addressed in the grounds filed is that the addition of Rs.26,57,533/- made by Assessing Officer has wrongly been sustained in appeal by the CIT(A).

2. However, at the time of hearing, an adjournment petition was moved on behalf of the assessee. Considering the material available on record and after noting the objections the Ld. Sr.DR it was considered appropriate to reject the same and proceed with the present appeal ex-parte qua the assessee on merit after hearing the Sr.DR.

3. The relevant facts of the case are that the assessee who had not filed any return was found as per data available to the tax authorities deposited cash of Rs.26,57,533/- in his bank account maintained with ICICI Bank Limited. Thus after recording of reasons notice u/s 148 was issued to the assessee requiring the assessee to explain the same. Notices issued u/s 142(1) remained uncomplished with. Information under section 133(6) of the I.T.Act was sought from the Manager, ICICI bank, Bandra (East), Mumbai Maharashtra for providing the bank statement of the assessee for the specific period. Considering the said statement of the SB Account number 634301509205 and in the absence of any

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representation on behalf of the assessee, addition of the said amount was made by an order under section 147/144 of the I.T.Act, 1961.

4. The issues were challenged in appeal before the CIT(A) wherein the assessee is found to have submitted that he has already declared and offered for profit Rs.1,48,407/- on gross receipts of Rs.29,04,253/-. In view of the fact that the said claim was not before the Assessing Officer, the matter was referred to the Assessing Officer. As per the Remand Report quoted in page 4 para 9 of the CIT(A)'s order, the Assessing Officer in the Remand proceedings required the assessee to produce his books of accounts alongwith supporting documents on 04.11.2015; thereafter another notice as per record was served on 06/11/2015 giving the date of compliance as 13/11/2015. The assessee instead appeared on 15/12/2015 but merely sought an adjournment. As a result thereof the hearings stood adjourned to 30/12/2015. On the said date, another adjournment was moved. Again time was granted. However, subsequently on 16/02/2016, the assessee filed written submissions. The CIT(A) considering that it was a repetition of what has occurred during the assessment proceedings held that the assessee has taken a very casual attitude towards the opportunity provided and considering the fact that the assessee had filed its return in the wrong Jurisdiction and despite opportunity had failed to prove that he was engaged in any trading activity in motor parts and auto parts confirmed the addition. He took note of the fact that the gross receipts of the assessee were equal to his gross profit thus at best the assessee it was concluded could be engaged in some job work. It was further noted by him that multiple bank accounts were maintained by the assessee and there was no mention anywhere of any business conducted from ICICI Bank in Mumbai which surfaced only through AIR information as even from the regular bank account maintained with State Bank of India, Gandhi Nagar, Delhi the payment of taxes were not made as they were being made through Punjab National Bank via internal banking or through the HDFC bank. Accordingly for these various reasons, the claim was considered

to be not allowable. Specific note was taken of the fact that cash deposited in the ICICI Bank, Mumbai was withdrawn on the same day or money was transferred from his Bank Account to the personal account of Sh.Bhupinder Singh or withdrawn through ATM and a few payments were towards repayment of loans taken from HSBC. Thus, the assessee being based in Delhi who had not claimed any trading activity in Mumbai and who had not even disclosed this Bank Account and despite opportunity had failed to substantiate its claim in the face of the multiple bank accounts maintained wherein the cash deposit stood unexplained, the addition made was confirmed.

5. The Ld.Sr.DR relied upon the impugned order and submitted that the addition deserves to be confirmed. However, on query qua the specific grievance of the assessee as per the grounds that the written submissions stated to have been filed on behalf of the assessee were not taken into consideration by the CIT(A) he was unable to show where these have been addressed. In the circumstances, it was his submission that the impugned order may be set aside back to the CIT(A).

6. I have heard the submissions and considered the material available on record. The mere fact that written submissions were filed by the assessee, I am of the view cannot be so construed that the right to be heard was given up. Thus taking note of the fact that although more than sufficient opportunity has been provided to the assessee during the remand proceedings and the appellate proceedings, I find one more opportunity on facts ought to have been provided as in the eventuality the written submissions were considered to be not sufficient to support the claim, an opportunity of being heard as per law ought to have been given. I find that in the face of the fact that the grievance of the assessee still persists the impugned order is set aside to the file fo the Ld.CIT(A) directing the said authority to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. While so directing it is made clear that the opportunity so provided to the assessee in good faith it is hoped is not abused and is

utilized fairly in making full and proper compliance before the CIT(A). In the eventuality the opportunity so provided is abused the Ld.CIT(A) would be at liberty to pass a speaking order in accordance with law.

7. In the result, the appeal of the assessee is allowed for statistical purposes and the adjournment petition moved was rejected.

The order is pronounced in the open court on 06th of January 2017.

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