

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER &  
SHRI AMARJIT SINGH, JUDICIAL MEMBER.

ITA No. 2370 /MUM/2015  
(Assessment Year : 2011-12)

Optimystix Entertainment India Pvt. Ltd.,  
21,SPV Nagar Janki Devi Public School,  
Near Versova Telephone Exchange,  
Andheri (West), Mumbai 400 053

PAN: AAACO 4359H

... Appellant

Vs.

The ACIT, Range 10(3)(1),  
Mumbai.

.... Respondent

Appellant by : Shri R.C.Jain  
Respondent by : Shri Deepak Ripote

Date of hearing : 19/07/2016  
Date of pronouncement : 22/07/2016

**ORDER**

**PER G.S.PANNU,A.M:**

The captioned appeal filed by the assessee pertaining to assessment year 2011-12 is directed against an order passed by CIT(A)-60, Mumbai dated 08/01/2015 which in turn arises out of an intimation dated 1/7/2011 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, the assessee has raised the following Grounds of appeal:-

*"1. The Ld. CIT (Appeals) erred in dismissing the appeal in law without giving a hearing to the appellant.*

*1.1 The Ld.CIT(Appeals) erred in holding that the appeal was not maintainable under section 246A of ACT.*

*2.The Ld. CIT(Appeals) ought to have admitted the appeal and disposed of the grounds raised in the memo of appeal inform 35.”*

3. The brief facts are that the respondent assessee is a company incorporated under the provisions of the Companies Act, 1956, and is, inter-alia, engaged in the business of production of television serials. During the course of its business, assessee was required to deduct tax at source on various payments made by it as per relevant provisions of the Act. The assessee company received an intimation dated 1/7/2011 under section 200A of the Act, whereby it was held that assessee had short deducted tax at source in certain cases and interest in such cases was also charged for such shortfall in deduction of tax at source. The intimation under section 200A of the Act was challenged in appeal before the CIT(A), who has dismissed the appeal of the assessee as unadmitted. As per CIT(A), an intimation passed under section 200A was not an appealable order in terms of section 246A of the Act and thus, such an appeal was liable to be dismissed as not maintainable. Against such a decision, assessee is in appeal before the Tribunal.

4. Before us, the plea of the assessee is that the CIT(A) has dismissed the appeal of the assessee without affording an opportunity of being heard. Ld. Representative for the assessee submitted that the only grievance of the assessee is that the CIT(A) be directed to allow the assessee an opportunity of being heard before adjudicating on the maintainability of the appeal. It was thus, contended that the matter be restored back to the file of CIT(A) for the said purpose.

5. Ld. Departmental Representative has not opposed the plea of the assessee for restoration of the matter back to the file of CIT(A) for the above reason.

6. We have also perused the order of the CIT(A) and find that the appeal filed by the assessee has been disposed of without affording an opportunity of being heard to the assessee. In our considered opinion, the principles of natural justice require that the CIT(A) ought to have allowed the assessee an opportunity of being heard, even on the issue of maintainability of the appeal before him. Since the said approach is conspicuous by its absence, we, therefore, deem it fit and proper to set-aside the order of CIT(A) and restore the matter back to his file for deciding the issues raised in the appeal afresh , including its maintainability, after affording reasonable opportunity of being heard to the assessee as per law.

7. In the result, appeal of the assessee is allowed , as above.

Order pronounced in the open court on 22/07/2016

Sd/-

(AMARJIT SINGH)  
JUDICIAL MEMBER  
Mumbai, Dated 22/07/2016

Sd/-

(G.S. PANNU)  
ACCOUNTANT MEMBER

Vm, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**