

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

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-33/Del/2016
(ASSESSMENT YEAR-2010-11)**

Anil Kumar Jain, P/o-Parveen Trading Co., 2698/8, Lothian Road, Kashmere Gate, New Delhi-110006. PAN-AAEPJ3123H (APPELLANT)	vs	ITO, Ward-35(5), Pratakshya Bhawan, Civic Centre, New Delhi (RESPONDENT)
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Assessee by	Sh. O.P.Agarwal, CA
Revenue by	Application Rejected

Date of Hearing	14.03.2016
Date of Pronouncement	06.05.2016

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 26/11/2015 of CIT(A)-12, New Delhi pertaining to 2010 – 11 assessment year.

2. No one was present on behalf of the Revenue. An Adjournment petition is placed on record stating that Sr. DR is on leave. On going through the same, it is seen that apart from carrying some indecipherable initial it neither names the person who has moved it nor does it reflect the designation of the person petitioning for time. No one was present in support of the petition moved. The moving of the petition in such a casual way is not appropriate. The application accordingly was rejected and it was considered appropriate to proceed with the present appeal ex-parte qua the Revenue Respondent on merits. The Ld. AR was heard only in regard to Ground No. 2 & 4 which read as under:-

2. *“Because even otherwise there is no services of Notice on the assesses for the date of hearing which was fixed for 18.11.2015 and there is no finding by the ld. C.T.T(A) that notice for hearing have been served on the Assesseees.*

4. *Because even otherwise “A” has already filed petition before the C.I.T(A) 12 on 14/12/2015 regarding non-service of notice as alleged in the Appeal order alongwith affidavit, but no reply, hence this appeal.”*

3. Inviting attention to the order under challenge at page 4 wherein the written submissions dated 17/09/2013 are found considered, the Ld. AR referring to para 8.2 of the impugned order submitted that for the specific date of hearing 10/11/2015, no notice had been received by the assessee. Accordingly the decision of the CIT(A) to dismiss the appeal relying upon Commissioner of Income-Tax vs. Multi Plan India (P) Ltd.; 38 ITD 320 (Del) and Estate of Late Tukojirao Holkar vs. CWT: 223 ITR 480 (M.P) was stated to be contrary to the statutory requirements. Inviting attention to the paper book filed in the Registry on 03/03/2016 it was submitted that before the CIT(A) the assessee had filed an affidavit unambiguously stating that for the specific date of hearing, no notice had been received by the assessee. Copy of the affidavit, it was submitted is at pages 2 and 3 of the paper book. Accordingly, in the circumstances it was his limited prayer that the issue may be set-aside to the file of the CIT(A) for the purpose of granting an opportunity of being heard. It was further submitted that the Commissioner who passed the order had never heard him and before the Commissioner who was earlier holding the charge written submissions had been filed. On transfer of the appeal to the CIT(A) who has passed the order it was submitted that the said person neither considered them nor deemed it appropriate to hear the assessee.

4. Since despite notice, no one is present for the Revenue the statement made supported by the affidavit on record are taken to be correct and true. Moreover, taking further note of the fact that the findings arrived at in para 8.3 to 8.5 do not meet the statutory mandate from ITA No-2379/Del/2015. Section 250(6) of the Income Tax Act, 1961 mandates that the CIT(A) shall pass a speaking order, the specific sub-section is reproduced hereunder for ready-reference:-

250. “(1)
 (2)
 (3)
 (4)
 (5)
 (6) *The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*
 (6A).....”

5. The specific provision requires the First Appellate Authority to set out points for determination and the decision thereon supported by reasons for arriving at a conclusion. The said mandatory exercise in the aforesaid provision in the peculiar facts of the present case is found to be not fulfilled. Accordingly holding the impugned order violative of the statutory mandate it is set aside back to the file of the CIT(A) to make good the statutory deficit.

6. It is further considered appropriate to observe that “Right to be heard is an important right to which a party who is faced with an adverse view is entitled to “*Audi alteram partem*” is one of the most famous and celebrated Rule of Natural Justice. The principles of natural justice are those which have been laid out by the Courts as being the minimum protection of the rights of an individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and

administrative authority while making an order affecting those rights. A careful perusal of the consistent judgements of the Apex Court would show that it has consistently been held that the Rules of natural justice are not embodied rules and the said phrase is not and cannot be capable of a precise definition. The underlying principle of natural justice evolved under the common law is to check arbitrary exercise of power by the State or its functionaries. Accordingly, the principle by its very nature implies the duty to act fairly i.e. fair play in action must be evident at every stage. Fair play demands that nobody shall be condemned unheard. In the celebrated judgement of the Apex Court in the case of A.K.Kraipak -vs- Union of India (1969) 2 SCC 262, it is observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The said rules are means to an end and not an end in themselves and though it is not possible to make an exhaustive catalogue of such rules however it can be readily said that there are two basic maxims of natural justice namely "*audi alteram partem*" and "*nemo judex in re sua*". In the present facts of the case we are concerned with the maxim "*audi alteram partem*" which again may have many facets two of them (a) notice of the case to be met; and (b) opportunity to explain. Their Lordships have cautioned that these rules cannot be sacrificed at the altar of the administrative convenience or celebrity. Thus, considering the afore-mentioned statutory provision and the principles of natural justice, the issue is restored back to the file of the CIT(A). Needless to say that before passing the order, a reasonable opportunity shall be provided to the assessee. While so directing it is hoped that the opportunity so provided is not abused by the assessee and is utilized in good faith as failing which the Ld. CIT(A)

would be at liberty to pass a speaking order in accordance with law on the basis of material available on record.

7. While so holding, it is hoped that the assessee shall utilize the opportunity so provided in good faith by making full and proper compliance before the CIT(A) as failing which the CIT(A) would be at liberty to pass a speaking order in accordance with law on the base of material available on record.

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

The order is pronounced in the open court on 06 of May, 2016.

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Dated: 06/05/2016

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI