

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

SMT. DIVA SINGH, JUDICIAL MEMBER

I.T.A No. 6598/Del/2019
(ASSESSMENT YEAR: 2013-14)

Rakesh Kumar Tehlan Shop No. 4, Virender Nagar Market, Najafgarh, New Delhi. PAN No. ACDPT7132R	Vs.	INCOME TAX OFFICER Ward 43(1) New Delhi.
(Appellant)		(Respondent)

Appellant By	None
Respondent by	Shri Sanjiv Mahajan, Sr. DR

Date of Hearing	18.10.2021
Date of Pronouncement	20.10.2021

Hearing conducted via Webex

ORDER

The present appeal has been filed by the assessee, wherein the assessee assails the correctness of the order dated 27.03.2018 of CIT(Appels), New Delhi pertaining to 2013-14 assessment year. Although various grounds have been raised assailing the order on merits. However, the sole issue taken up for consideration in the present proceeding is ground no. 1 which reads as under: -

1. *“That the Hon’ble Commissioner of Income Tax (Appeals) has erred in the law as much as on the facts of the case by dismissing the appeal of the appellant for non attendance without appreciating the facts of the case of the appellant on the merits and without providing an adequate opportunity of being heard.”*
2. At the time of hearing, no one was present on behalf of the assessee. The record shows that on each of the occasions the appeal came up for hearing the assessee has remained unrepresented before the ITAT. The appeal is being decided ex-parte qua the assessee appellant on merits after hearing the Revenue and considering the record.

3. The Ld. Sr. DR was heard who relies upon the impugned order stating that the notices to the assessee returned back un-served with the comment "left address" etc. Accordingly, after making few attempts the Ld. Commissioner it was submitted was justified in holding that the assessee is not serious in pursuing the appeal filed. Hence, dismissing the same relying upon the position of law as held in CIT Vs. B.N. Bhattacharya & Others, 118 ITR 461 and Estate of late Tukoji Rao Holkar Vs. CWT, 223 ITR 480 (MP) it was submitted that the addition made in the assessment order were confirmed.

4. I have heard the submissions and perused the material available on record. On a consideration of the statutory requirements, I am of the view that the impugned order in violation of the statutory remit cannot be upheld. Sub-section (6) of Section 250 of the Income Tax Act, 1961 mandates that the order passed by the Ld. Commissioner should be "*250(6) be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*" I find that the said statutory requirement is not fulfilled. The First Appellate Authority exercising its powers is expected to set out the points for determination in the appeal filed arrive at a decision thereon alongwith reasons for the decision taken. These steps are missing. Hence for want of these deficiencies the order cannot be upheld.

5. Accordingly, the impugned order is set aside. While so directing it is seen that even before the ITAT the assessee has remained unrepresented. The notices sent have repeatedly come back with the comments "left without address". It is seen that the assessee in the Form no. 36 filed in the Registry has made this very same address available to the ITAT as available to the Assessing Officer and the CIT(Appeals). It is further seen that in the assessee's personal

information as per Form no. 36 email address provided for communication is: -

a77mathur@gmail.com

6. Accordingly, the impugned order is set aside back to the file of the CIT(A) with a direction to pass a speaking order in accordance with law. The assessee in its own interest is directed to ensure full and proper participation before the said Authority. It is made clear that in the eventuality of abuse of the trust reposed the Ld. CIT(Appeals) would be at liberty to pass an order on the basis of material available on record.

7. Said order was pronounced in the open court at the time of hearing itself.

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

Order pronounced in the open court 20/10/2021

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

**Kavita Arora, SPS*

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT concerned Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar, ITAT Delhi Benches: Delhi.