

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

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

(THROUGH VIDEO CONFERENCING)

ITA No.8316/Del/2019
(Assessment Year : 2007-08)

Special Jewellery Co. Ltd. 32/3176, Beadon Pura Karol Bagh, New Delhi-110 005 PAN : AABCS 0690 L	Vs.	DCIT Circle – 9(1) New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	--None--
Revenue by	Shri R. K. Gupta, Sr. DR

Date of hearing:	04.10.2021
Date of Pronouncement:	04.10.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 09.08.2019 of the Commissioner of Income Tax (Appeals)-XXV, New Delhi relating to Assessment Year 2007-08.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company who filed its return of income for A.Y. 2007-08 on 29.10.2007 declaring total income at Rs.33,95,050/-. The return of income was initially processed u/s 143(1) of the Act thereafter notice u/s 148 of the Act was issued on 27.03.2014 and in response to which assessee submitted that the return filed by it on 29.10.2007 be considered to be returned in response to notice u/s 148 of the Act. Thereafter, the case was taken up for scrutiny and assessment was framed u/s 147/143(3) of the Act vide order dated 25.06.2014 and the total income was determined at Rs.41,62,520/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 09.08.2019 in Appeal No.10380/18-19 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before me and has raised the following grounds of appeal:

- “1. *That the assessing officer ("AO") erred on facts and in law in completing the assessment under section 143(3) of the Income-tax Act, 1961 (the Act) at an income of Rs.41,62,520/- as against income of Rs.33,95,050 returned by appellant. The CIT(A) further erred in upholding the same.*
2. *That on the facts and circumstances of the case and in law the CIT(A) erred in dismissing the appeal of the Appellant in in limine for non-prosecution, without appreciating that the notices were not served on the Appellant.*
3. *That on the facts and circumstances of the case in law, CIT(A) erred in appreciating the documents, submissions and evidences furnished by the Appellant in support of its claim and dismissing the appeal in limine.*
4. *That on the facts and circumstances of the case and in law the CIT(A) erred in upholding the order dated June 25, 2014 passed by the AO under section 143(3) read with section 147 of the Income Tax Act, 1961 ("Act") which was beyond jurisdiction, bad in law and void an initio.*

5. *That on the facts and circumstances of the case and in law, CIT(A) erred in upholding the action of AO in initiation of the reassessment proceedings being based merely on conjectures and surmises is illegal and bad in law.*
6. *That on the facts and circumstances of the case and in law, CIT(A) erred in upholding the action of AO in making an addition of Rs.4,04,250/- in the absence of any cogent material alleging that the transaction with Mihir Diamonds was a sham.*
7. *That on the facts and circumstances of the case and in law, CIT(A) erred in upholding the action of the AO in making an adhoc disallowance of Rs.3,63,223 being 10% of the total administrative & other charges amounting to Rs.36,32,230 alleging personal element.*
- 7.1 *Notwithstanding and without prejudice the CIT(A) at the most could have upheld disallowance to the extent of 10% of the tour and travelling expenses amounting to Rs.2,75,805 as personal element was alleged by the AO only in relation to such expenditure.*
8. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the action of the assessing officer of charging interest under sections 234A, 234B and 234C of the Act.*

The aforesaid grounds are mutually exclusive and without prejudice to each other.

The Appellant craves leave to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of appeal either before or during the hearing before the Hon'ble Tribunal."

4. On the date of hearing none appeared on behalf of the assessee nor any adjournment application was filed. In view of these facts, I proceed to dispose of the appeal ex-parte qua the

assessee after considering the material on record and after hearing the Learned DR.

5. Before me, Learned DR at the outset, fairly submitted that the order passed by CIT(A) is an *ex parte* order and not on merit. He therefore submitted that the matter be decided accordingly.

6. I have heard the Learned DR and perused the materials on record. The perusal of CIT(A) order reveals that CIT(A) has passed an *ex parte* order without deciding the issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. I am of the view that by dismissing the appeal without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be condemned unheard. I therefore set aside the impugned order of CIT(A) dated 09.08.2019 and restore the issue to the file of CIT(A) for re-adjudication of the issues in accordance with law and after granting sufficient opportunity of hearing to both the parties. In view of the decision to restore the issue back to CIT(A), I am not adjudicating on merits, the grounds raised by the assessee. **Thus the grounds of assessee are allowed for statistical purposes.**

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

Order pronounced in the open court on 04.10.2021, immediately after conclusion of the hearing of the matter in virtual mode.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 04.10.2021

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI