

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER  
AND  
SH. T.S.KAPOOR, ACCOUNTANT MEMBER

**I.T.A .No.-6261/Del/2012**  
**(ASSESSMENT YEAR-2004-05)**

Executive Solutions Pvt. Ltd., 430, Vikas Kunj, Vikas Puri, New Delhi-110018. <b>PAN-AABCE0741Q</b> <b>(APPELLANT)</b>	vs	ITO, Company Ward-11(2), New Delhi.  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh.Ankit Gupta, Adv.</b>
<b>Respondent by</b>	<b>Smt. Parwinder Kaur, Sr. DR</b>

<b>Date of Hearing</b>	<b>01.06.2015</b>
<b>Date of Pronouncement</b>	<b>10.06.2015</b>

**ORDER**

**PER DIVA SINGH, JM**

The present appeal has been filed by the assessee assailing the correctness of the order dated 15.10.2010 of CIT(A)-XIII, New Delhi pertaining to 2004-05 assessment year. The parties were heard only in regard to Ground Nos.-1 & 2 filed which reads as under:-

1. "That the Ld. CIT(A) has dismissed the appeal u/s 250 exparte without appreciating the facts and circumstances of the case.
2. That the Ld. CIT(A) has dismissed the appeal exparte which is unlawful and unreasonable without providing reasonable opportunity to the appellant"

2. The relevant facts relatable to the said issue are that the AO considering the loss return filed by the assessee in his order passed u/s 143(3)/147 concluded the assessment at a positive figure of Rs. 11,72,630/- by making additions u/s 68 of the Act on account of unexplained cash credit amounting of Rs. 13,50,000/-. The said action was challenged in appeal before the CIT(A). As per record, the assessee in the appellate proceedings initially sought time on a few occasions and subsequently on the last occasion when the appeal was fixed for hearing the assessee did not appear. Accordingly the additions made

in the assessment order were sustained considering the material available on record by an *ex parte* order.

3. Aggrieved by this the assessee is in appeal before the Tribunal. The Ld. AR appearing at the time of hearing submitted that in the discussion at para 3 of the impugned order the CIT(A) had recorded that the assessee had not appeared and had failed to record that infact the assessee had appeared and had tried to file an adjournment application which was refused. Copy of the same, it was submitted is placed at page 5. The said adjournment, it was submitted was filed alongwith the written submission, however, since the CIT(A) refused to take these on records they had to be sent by speed post on the same date as evidenced by Paper Book paged 6. Copy of the written submissions it was submitted is at pages 7-12 of the Paper Book. The impugned order it was submitted passed on the said date itself without considering the written submission. In this background it was his submission that considering the submissions the additions on merits may be deleted or alternately the impugned order passed without considering the submissions of the assessee may be recalled and the issue be restored. The matter it was requested may be restored to the AO as the assessee had raised Ground No.-4 before the CIT(A) agitating that the AO has not given a reasonable opportunity to the assessee. The said ground it was submitted has not been accepted by the CIT(A) on facts and since certain fresh evidence may need to be filed, it was his submission that the issue may be restored to the file of the AO.

4. Ld. Sr. DR, Smt. Parwinder Kaur, on perusing the material filed submitted that no doubt the impugned order is passed *ex-parte*, however more than sufficient opportunity was given to the assessee and in the eventuality the assessee is requesting that opportunity of being heard on merit be provided then the said opportunity not having been provided at the appellate stage may be provided however the appeal it was her submission should not be restored to the AO as nothing has been placed on record to show that the opportunity was denied at that stage.

5. We have heard the rival submissions and perused the material available on record. A perusal of para 3 of the impugned order shows that more than reasonable time was given by the CIT(A) to the assessee. However, considering

the statement of the Ld. AR that the then counsel for the assessee, Sh. R.K.Tayal, CA on the said date did not appear as he was suffering from vertico cervical in the face of the evidences filed where even written submissions were not taken on record we deem it appropriate to consider the prayer of the assessee. In the facts as argued before us wherein the assessee due to a medical inability remained unrepresented on 15.10.2012 and the order was passed without considering even the written submissions, we are of the view that on facts where the above stated factual position is not being disputed, it becomes necessary to address the lapse at the stage at which it has occurred. Thus, in the interests of substantial justice we accept the prayer of the Ld. AR that opportunity of being heard be provided. Being of the view 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.

5.1. 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 alterm 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 ground No.-1 & 2 raised before us in regard to the opportunity of being heard agitated before us and considering the submissions of either side where in the sole issue agitated before us is pertaining to granting of opportunity of being heard which admittedly has not been made available to the assessee we are inclined to accept the prayer of the assessee on a careful consideration of the legal position thereon. Accordingly the ground No.-1 & 2 raised by the assessee is allowed and the remaining grounds are restored back to the file of the CIT(A) with the direction to decide the same in accordance with law after giving the assessee a reasonable opportunity of being heard. While so directing, it is presumed that the opportunity so being provided in good faith to the assessee is not abused by the assessee and is utilized in good faith by ensuring that full and proper compliance is made before the CIT(A) so as to ensure that the appeal is decided. We add that in the eventuality the assessee abuses the trust reposed and fails to utilize the opportunity so provided in good faith, the CIT(A) would be at liberty to proceed to decide the present appeal on merit after giving the assessee a reasonable opportunity of being heard. The Grounds raised by the assessee accordingly are allowed for statistical purposes. The said order was pronounced in the open Court on the date of hearing itself.

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

**The order is pronounced in the open court on 10<sup>th</sup> of June 2015.**

**Sd/-**  
**(T.S.KAPOOR)**  
**ACCOUNTANT MEMBER**

Dated:10/06/2015

*\*Amit Kumar\**

Copy forwarded to:

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

**Sd/-**  
**(DIVA SINGH)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI