

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "B" NEW DELHI**

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

**I.T.A .No.-2803 & 5274/Del/2011
(ASSESSMENT YEAR-2006-07)**

Smt. Deepa Gupta,
193/6, Shastri Nagar,
Meerut.

vs

CIT,
Meerut.

**PAN-AHKPG5107B
(APPELLANT)**

(RESPONDENT)

Appellant by: Sh. Anil Sharma, Adv.

Respondent by: Dr. Sudha Kumari, CIT DR

ORDER

PER DIVA SINGH, JM

These are two appeals filed by the assessee against the order dated 28.03.2011 of CIT, Meerut pertaining to 2006-07 assessment year and against the penalty imposed u/s 271(1)(c) dated 22.09.2011 by CIT, Meerut pertaining to 2006-07 assessment year respectively.

2. In ITA No-2803/Del/2011, the assessee has raised the following grounds:-

“1. The learned Commissioner of Income Tax was not justified by setting aside the case without affording a reasonable opportunity to the Assessee to controvert the points raised with regard to the order passed by the ld. AO which the learned CIT considered erroneous and prejudicial to the interest of the revenue.

2. The learned Commissioner of Income Tax was not justified in invoking the powers u/s 263 as there exists neither incorrect assumption of the facts nor incorrect application of law in the order passed by the ld. AO.

3. The learned Commissioner of Income Tax acted upon erroneously by invoking section 263 as no evidence as to higher receipts and sale of shop brought on record.”

2.1. The Ld. AR, Sh. Anil Sharma, appearing on behalf of the assessee. Inviting attention to the impugned order dated 28.03.2011 submitted that a notice u/s 263

was issued on 22.02.2011 and after giving two opportunities, the ex-parte order was passed. It was his submission that the assessee never received any notice as such the concluded assessment has been re-opened based on no evidence. It was his submission that the assessee has returned an income of Rs.2,43,987/- and based on no evidence the CIT, Meerut concluded that the gross receipts of Banquet Hall were Rs.16,17,000/- instead of Rs.4,30,000/- resulting in addition being made. It was his submission that had the CIT given an opportunity the proposed addition would not have survived. Similarly the view taken that profits/capital gains on the sale of shops, rental income etc. disclosed was not correct was also based on no facts and had the said authority given an opportunity to address the issues. The assessee would have been able to explain the same and the concluded assessment would not have subjected to reversionary powers of the department. The Ld. AR's contention was that on this ground the appeal of the assessee can be allowed. The Ld. CIT DR was heard who placed reliance upon the impugned order. Apart from that it was his submission relying upon the Inspector's Report filed in the Bench that it is not a correct statement that the assessment has been re-opened on no evidence. The CIT, Meerut has relied upon the Inspector's Report, copy of which is filed before the Bench.

3. We have heard the rival submissions and perused the material available on record. A perusal of the para 3 of the impugned order shows that the assessee has not been afforded a reasonable opportunity to address the issue. For ready-reference, we reproduce from the impugned order itself:-

“3. Subsequently a notice u/s 263 of the I.T.Act, 1961 was issued on 22/2/2011 fixing the case for 8/3/2010 which remained uncomplished with. Yet another notice issued fixing the case for 15/3/2010 which, however, returned back unserved. None attended and again a notice was served on 23/3/2010 by affixture fixing the date of hearing for 28/3/2010. Again, no one attended on the date fixed. Hence the order is being passed after considering the entire material available on

records and gathered to adjudicate on the relevant issues as narrated above.”

3.1. 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.

3.2. 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. The assessee has raised ground No.-1 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 raised by the assessee is allowed and the remaining grounds are restored back to the file of the CIT, Meerut with the direction to decide the same in accordance with law after giving the assessee a reasonable opportunity of being heard.

4. In the result, the appeal of the assessee i.e ITA No-2803/Del/2011 is allowed for statistical purposes.

5. The facts qua in ITA No-5274/Del/2011 are found discussed in the order dated 22.09.2011 passed by the CIT, Meerut. After hearing the parties before the Bench wherein the CIT DR relies upon the impugned order and the Ld. AR submits that penalty can be levied only by the AO and that too when the quantum is finalized. In the facts of the present case it was his submission that penalty has been imposed by CIT in his order passed u/s 263. The conclusion has been arrived at on the basis of Revisionary powers exercised in quantum without hearing the assessee and proceeded to levy penalty u/s 271(1)(c) which could have been levied only by the AO, if so warranted on facts. On a consideration of the respective stand of the parties before the Bench in the light of the material available on record, we hold that the penalty order passed by the CIT, Meerut deserves to be quashed as the order of the CIT, Meerut in question has been set aside and restored to the said authority. Penalty if at all can be levied has to be a subject matter of consideration for the AO as and when the position on facts so warrant.

5.1. In the result, the appeal of the assessee i.e ITA No-5274/Del/2011 is allowed.

6. In the result, ITA No-2803/Del/2011 is allowed for statistical purposes and ITA No-5274/Del/2011 is allowed.

The order is pronounced in the open court on 23rd of August 2013.

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

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

Dated: 23/08/2013

Amit Kumar

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT NEW DELHI**