

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

ITA No.1519/Bang/2014
Assessment year : 2006-07

Shri Jayaram Suvarna, C/o. Rao & Swami, Chartered Accountant, 2/1, Connaught Road, Bengaluru – 560 052. PAN: AGZPS 7603J	Vs.	The Deputy Commissioner of Income Tax, Circle 1, Udupi.
APPELLANT		RESPONDENT

Appellant by	:	Shri H. Anil Kumar, CA
Respondent by	:	Shri Sunil Kumar Agarwal, Jt. CIT(DR)

Date of hearing	:	28.07.2015
Date of Pronouncement	:	30.07.2015

ORDER

Per N.V. Vasudevan, Judicial Member

This appeal by the assessee is against the order dated 2.4.2014 of the CIT(Appeals), Mysore relating to assessment year 2006-07.

2. The assessee in this appeal is an individual. He carries on business of a dealer in Hero Honda products under the name & style, Jaidev Motors.

For AY 2006-07, the assessee filed a return of income on 31.10.2006 declaring a loss of Rs.20,89,937. The AO completed the assessment u/s. 143(3) of the Act by an order dated 24.12.2008, determining the total income of NIL by making several additions to the returned loss. Aggrieved by the aforesaid order of the AO, the assessee preferred the appeal before the CIT(Appeals).

3. The appeals were fixed for hearing on 21.3.12 and 31.5.12. Finally appeal was fixed for hearing on 20.3.14. It appears that the appeal which ought to have been heard by CIT(Appeals), Mangalore was in fact heard by the CIT(Appeals) at Mysore. The circumstances under which the CIT(Appeals), Mysore heard this appeal is not emanating from the records. The fact remains that the assessee had filed an application for adjournment before CIT(A), Mangalore on 20.3.2014 seeking adjournment of the hearing fixed on 20.3.2014. This has not been brought to the notice of CIT(Appeals), Mysore. In the impugned order, the CIT(A), Mysore has merely observed in para 2 as follows:-

“2. None appeared. The submissions filed by the appellant have been considered.”

4. Perusal of the CIT(A), Mysore also shows that he had not issued any notice of hearing of the appeal fixed on 20.3.14 to the assessee. The CIT(A) proceeded to decide the appeal of the assessee ex parte and

dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), the assessee has preferred the present appeal before the Tribunal.

5. In ground No.2, the assessee has challenged the order of CIT(A) dismissing the appeal ex parte. It has been alleged that the ex parte order has been passed without considering the request of the assessee for adjournment. It is the plea of the assessee that he has not been afforded proper opportunity of being heard and therefore order of the CIT(A) should be set aside and CIT(A) should be directed to decide the appeal afresh after affording opportunity to the assessee.

6. We have heard the rival submissions. A copy of the request for adjournment filed by the assessee in the office of CIT(A), Mangalore on 20.3.2014 was also filed before us. We also find from the order of CIT(A) that there has been no reference whatsoever to any notice of hearing on 20.3.2014 having been issued to the assessee.

7. On a consideration of the above facts and circumstances, we are satisfied that the assessee was not afforded proper opportunity of being heard by the CIT(Appeals). The impugned order is therefore set aside and the Id. CIT(A) is directed to decide the appeal of the assessee afresh, after affording opportunity of being heard to the assessee.

8. In view of the decision on ground No.2, the other grounds of appeal which challenge the order of CIT(A) sustaining the additions made by the AO do not require any consideration at this stage.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on this 30th day of July, 2015.

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 30th July, 2015.

/D S/

Copy to:

1. Appellant
2. Respondents
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar /
Senior Private Secretary
ITAT, Bangalore.