

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

Before Sh. N. K. Saini, AM and Sh. Kuldip Singh, JM

ITA No. 5753/Del/2014 : Asstt. Year : 2009-10

Progressive Mega Structures Pvt. Ltd., 809, 8 th Floor, Jaina Tower-I, District Centre, Janak Puri, New Delhi-110058	Vs	Income Tax Officer, Ward-14(4), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACP3818L		

Assessee by : None

Revenue by : Sh. Atiq Ahamad, Sr. DR

Date of Hearing : 21.09.2017	Date of Pronouncement : 22.09.2017
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 27.11.2013 of Id. CIT(A)-XVII, Delhi.

2. During the course of hearing nobody was present on behalf of the assessee neither any adjournment was sought. We, therefore, proceeded *ex-parte* and the appeal is decided after hearing the Id. DR.

3. The main grievance of the assessee vide Ground Nos. 1 to 3 relates to the *ex-parte* order passed by the Id. CIT(A) without giving reasonable opportunity of being heard.

4. Facts of the case in brief are that the assessee e-filed return of income on 31.03.2011 declaring a loss of Rs.17,20,459/-. Later on, the case was selected for scrutiny. The AO framed the assessment at an income of Rs.66,26,611/- by making the addition of Rs.64,57,350/- u/s 68 of the Income Tax Act, 1961 (hereinafter referred to as the Act) and disallowing the expenses of Rs.18,89,720/-.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) who decided the appeal *ex-parte* and enhanced the income to Rs.1,94,76,490/-.

6. Now the assessee is in appeal. The Id. DR supported the impugned order passed by the Id. CIT(A) and further submitted that the assessee did not cooperate. Therefore, there was no alternative with the Id. CIT(A), except to decided the appeal *ex-parte*.

7. We have considered the submissions of the Id. DR and perused the material available on the record, it is noticed that the Id. CIT(A) decided the appeal of the assessee *ex-parte* by observing in paras 4 & 4.1 of the impugned order as under:

“4. During the course of appellate proceedings notices were issued to the appellant to attend the proceedings as per details given below:-

"The first notice was issued to the appellant on 29.04.2013 fixing the case for hearing on 14.05.2013. The notice was

sent by speed post at the address given in the appeal memo at the registered office of the appellant company. Again a fresh notice was issued on 05.09.2013 fixing the case for hearing on 18.09.2013. But the notice was returned back un-served with the remarks "Left the address". Another notice was issued on 13.09.2013 fixing the case for hearing on 25.09.2013. The AR of the appellant filed an application for adjournment and the case was adjourned for 04.10.2013. The appellant had not informed of any change of address."

4.1. Notices were issued to the appellant at the address given in the appeal memo which is "M/s. Progressive Mega Structures (P) Ltd., 14/1, East Patel Nagar, New Delhi - 110008". The notice was ultimately sent at the address of the AR of the appellant. The AR moved an application for adjournment to 04.10.2013 on which date there was no compliance. Since the appellant is not attending the appellate proceedings and not complying to notices issued. I am completing the case ex-parte on the basis of documents on record and on merit."

8. From the above observations of the Id. CIT(A), it is noticed that the appeal fixed for hearing before him on 25.09.2013 was adjourned for 04.10.2013. The Id. CIT(A) mentioned that the assessee had not informed of any change of address. It, therefore, appears that intimation regarding the date for hearing was not intimated to the assessee. It is not brought on record as to whether the notice for hearing was served upon the assessee. It is also noticed that the assessee in its grounds of appeal had stated that no notice for hearing was served upon the assessee. It is well settled that nobody should be condemned unheard as per the *maxim*

“*audi alteram partem*”. In the present case, it is also not clear as to whether the enhancement notice was served upon the assessee. We, therefore, considering the totality of the facts, deem it appropriate to set aside this issue back to the file of the Id. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 22/09/2017)

Sd/-
(Kuldip Singh)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 22/09/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR