

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

Before Sh. N. K. Saini, Accountant Member

ITA No. 19/Del/2017 : Asstt. Year : 2012-13

Finesse Impex Ltd., D-5, Ganpati Apartment, Alipur Road, Civil Lines, Delhi-110054	Vs	Income Tax Officer, Ward-9(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACF1830E		

Assessee by : None

Revenue by : Sh. T. Vasanthan, Sr. DR

Date of Hearing : 20.09.2017	Date of Pronouncement : 25.09.2017
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ORDER

This is an appeal by the assessee against the order dated 20.10.2016 of Id. CIT(A)-3, Delhi.

2. Following grounds have been raised in this appeal:

“1. That the Ld. Commissioner of Income-tax (Appeals) grossly erred on facts and in law in passing the order without affording proper opportunity to the appellant.

2. That the Ld. Commissioner of Income-tax (Appeals) grossly erred in violating principles of natural justice in rejecting request for adjournment, properly filed by the appellant.

3. That the Ld. Commissioner of Income-tax (Appeals) grossly erred in confirming assessment computed by

the Ld. A.O. at Rs.29,74,600/- instead of returned loss of Rs.19,403/-.

4. The Ld. Commissioner of Income-tax (Appeals) grossly erred in confirming:

4.1 That a sum of Rs.10,00,000/- is unexplained u/s. 68 of the I.T. Act, 1961.

4.2 That a sum of Rs.19,94,000/- is a liability remitted/ceased u/s. 41(1) of the I.T. Act, 1961.

4.3 In confirming addition of Rs.10,00,000/- u/s. 68 of the I.T. Act, 1961 and Rs.19,94,000/- u/s. 41(1) of the I.T. Act, 1961.

5. That the order passed by the Ld. Commissioner of Income-tax (Appeals) is patently illegal pervasive to provisions of the law and interpretations thereof given by the Courts.

6. That the grounds hereinabove are without prejudice to each other.

7. That the appellant craves, leave to add, amend or alter any grounds of appeal either before or at the time of hearing of appeal.”

3. During the course of hearing nobody was present on behalf of the assessee neither any adjournment was sought. Therefore, the appeal is decided *ex-parte* after hearing the ld. DR.

4. Vide Ground Nos. 1 & 2, the main grievance of the assessee relates to the dismissal of the appeal *ex-parte* without providing proper opportunity and rejecting the request for adjournment.

5. Facts of the case in brief are that the assessee e-filed the return of income on 15.01.2014 declaring a loss of Rs.19,403/-. Later on, the case was selected for scrutiny. The AO framed the assessment at an income of Rs.29,74,597/- rounded off to Rs.29,74,600/- by making an addition of Rs.10,00,000/- u/s 68 of the Income Tax Act, 1961 (hereinafter referred to as the Act) and another addition of Rs.19,94,000/- u/s 41(1) of the Act.

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) who dismissed the appeal in *limine* for non-prosecution by observing as under:

“This office vide notice dated 27.09.2016 gave the final opportunity to the appellant to attend the appellate proceedings on 19.10.2016 and file the submissions in regard to the grounds raised in the appeal. But again the AR requested for the adjournment. The adjournment sought by the counsel is rejected having sought without any valid reasons.”

7. Now the assessee is in appeal.

8. I have considered the submissions of Id. DR and perused the material available on the record. From the aforesaid notings of the Id. CIT(A) in the impugned order, it is clear that the assessee sought an

adjournment which was rejected by the Id. CIT(A). However, it is not mentioned that what were the reason for seeking the adjournment, the application of the assessee was rejected simply by stating that the adjournment was sought without any valid reason. The Id. CIT(A) dismissed the appeal for non-prosecution and had not discussed the issue raised by the assessee on merit. It is well settled that nobody should be condemned unheard as per the *maxim "audi alteram partem"*. I, therefore, deem it appropriate to set aside the impugned order and remand this case 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.

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

(Order Pronounced in the Court on 25/09/2017)

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

Dated: 25/09/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR