

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

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

ITA No. 5550/Del/2014 : Asstt. Year : 2010-11

M/s Parnika Commercial & Estates P. Ltd., D-64, 6 th Floor, Himalaya House, 23KG Marg, New Delhi-110001	Vs	Addl. Commissioner of Income Tax, Range-14, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACP0555C		

Assessee by : Sh. Kapil Goel, Adv.

Revenue by : Smt. Paramita Tripathy, CIT DR

Date of Hearing : 19.09.2017	Date of Pronouncement : 25.09.2017
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 14.08.2014 of Id. CIT(A)-XVII, New Delhi.

2. Following grounds have been raised in this appeal:

“1. On the facts and in the circumstances of the case and in law, the Worthy CIT(A) in Appeal No. 46/13-14 dated 22/04/2013 has erred in passing that order in contravention of the provisions of Section 250(6) of the Income Tax Act, 1961.

2. That on the facts and circumstances of the case, the Worthy CIT(A) has erred in confirming addition of Rs.4,09,759/- by disallowing the purchases without considering the fact that the assessee has

bonafide purchase for the use on its project & also paid the VAT on the same.

3. That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.”

3. Facts of the case in brief are that the assessee filed the return of income on 15.10.2010 declaring an income of Rs.2,69,07,051/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Later on, the case was selected for scrutiny. The AO made the addition of Rs.4,09,759/- on account of bogus expenditure debited under the head purchases.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who sustained the addition by passing the *ex-parte* order and observing as under:

“The first notice was sent to the appellant on 12.06.2014 by speed post for attending on 20.06.2014. On 20.06.2014 a letter was filed by the appellant and the case was adjourned to 02.07.2014. On 02.07.2014 neither anybody attended nor any request for adjournment was filed. Another notice was sent to the appellant on 09.07.2014 for attending on 24.07.2014. On 24.07.2014 neither anybody attended nor any request for adjournment was filed. Notice was issued to the appellant on 31.07.2014 for attending on 11.08.2014. On 11.08.2014 a letter was again filed by the appellant for adjournment and the request was rejected. The appellant did not attend thereafter.”

5. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that the Id. CIT(A) had not given proper opportunity of being heard and decided the appeal *ex-parte*. It was further stated that neither the AO nor the Id. CIT(A) appreciated the facts and the explanation of the assessee in right perspective.

6. In his rival submissions the Id. DR submitted that the Id. CIT(A) decided the appeal of the assessee on merit. Therefore, no interference is called for in the impugned order.

7. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the Id. CIT(A) himself admitted that on 11.08.2014 when the appeal was fixed for hearing before him, the assessee filed a letter for an adjournment which was rejected. However, no reason has been given for rejecting the adjournment application of the assessee. It is well settled that nobody should be condemned unheard as per the *maxim "audi alteram partem"*. We, therefore, by considering the totality of the facts, deem it appropriate to set aside 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 to the assessee.

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

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

Sd/-
(Kuldip Singh)
JUDICIAL MEMBER

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