

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

Before Sh. N. K. Saini, AM and Smt. Beena A. Pillai, JM

ITA No. 2728/Del/2016 : Asstt. Year : 2011-12

ITA No. 2729/Del/2016 : Asstt. Year : 2012-13

ITA No. 2730/Del/2016 : Asstt. Year : 2013-14

Supertech Limited, 1114, Hemkunt Chamber, 89, Nehru Place, New Delhi-110019	Vs	ACIT (TDS), Noida
(APPELLANT)		(RESPONDENT)
PAN No. AABCS0646N		

Assessee by : None

Revenue by : Sh. Kaushlendra Tiwari, Sr. DR

Date of Hearing : 28.12.2017	Date of Pronouncement : 28.12.2017
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ORDER

Per Bench:

These appeals by the assessee are directed against the common order dated 16.03.2016 of ld. CIT(A)-I, Noida.

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 appeals have been decided after hearing the ld. DR.

3. Following grounds have been raised in these appeals:

“1. The order of the learned commissioner of Income Tax (Appeal)-I, Noida, U.P. confirming the addition of Rs.10.86.14,779/- made by the Assessing officer on the assessee treating assessee is default for not deducting the TDS on lease rent alleged to

be deduct TDS on payment of lease rent U/s 194-1 being a local authority is contrary in law and facts of the case.

2. The order of the Ltd. CIT confirming the addition without providing the reasonable opportunity inspite of an adjourn application submitted on 21.10.2016.

3. On the facts brought on record, the learned Commissioner of Income Tax (appeals) ought to have deleted the addition made by the Assessing Officer.

4. The appellant craves leaves to add or amend any ground of appeal.”

4. Vide Ground No. 2, the grievance of the assessee relates to the confirmation of addition by the Id. CIT(A) without providing a reasonable opportunity of being heard inspite of an adjournment application submitted on 21.10.2016.

5. Facts of the case in brief are that the AO passed the order u/s 201(1)/201(1A) of the Income Tax Act, 1961 (hereinafter referred to as the Act) on 28.02.2014 and held the assessee to be an assessee in default for not deducting the tax at source and for not paying the tax deducted at source to the credit of the Central Government in time. The AO raised the tax liability of Rs.3,58,83,474/-.

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) who decided the appeal *ex-parte* and confirmed the liability raised by the AO.

7. Now the assessee is in appeal. The ld. DR strongly supported the orders of the authorities below and further submitted that the assessee did not deduct tax on the payment of lease rent to the Noida Development Authority/Greater Nodia Development Authority as per the provisions of Section 194 I of the Act. Therefore, the AO was justified in holding the assessee as an assessee in default.

8. We have considered the submissions of the ld. DR and perused the material available on the record. In the present case, it is noticed that the ld. CIT(A) passed the *ex-parte* order by observing in para 2 of the impugned order which read as under:

“2. The case was appellant was fixed for hearing on 08/06/2015 but there was no compliance and no request for adjournment was received either. Notice was again sent and case was fixed for hearing on 20/08/2015. On 20/08/2015 a letter for adjournment was received which was granted and the case was again fixed for hearing on 22/09/2015. Again there was no response and request for adjournment was received either. The case was again fixed for 16/12/2015 and 01/01/2016 but again there was no response. However, on 21/01/2016 a letter was received for further adjournment on the pretext that the counsel is out of station and the required details and documents could not be prepared. From the above it is clear that the appellant is not interested to prosecute its case.”

9. From the above observation of the ld. CIT(A), it is clear that the assessee sought adjournment on the pretext that the Counsel was out of station, for that reason the required details and documents could not be prepared. The ld. CIT(A) had not given any reason for not accepting the

said request. He had also not pointed out as to whether request of the assessee for adjournment was rejected or accepted, he simply stated that the assessee was not interested to prosecute its case. On the contrary, the assessee sought time for preparation and furnishing the required details/documents. It is well settled that nobody should be condemned unheard as per the *maxim "audi alteram partem"*. We, therefore, by keeping in view the principles of natural justice, deem it appropriate to set aside the impugned order and remand the issue back to the file of the ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 28/12/2017)

Sd/-
(Beena A. Pillai)
JUDICIAL MEMBER

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

Dated: 28/12/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR