

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH 'SMC', PATNA**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 94/Pat./2017 : Asstt. Year : 2012-13**

Meridain Construction India Ltd., 305, Sukriti Apartment, SP Verma Road, Patna City-800008	Vs	Income Tax Officer, Ward-2(1), Patna
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAECM8976E</b>		

**Assessee by : Sh. Shikesh Jha, Adv.**

**Revenue by : Sh. Abhay Kumar, Sr. DR**

<b>Date of Hearing : 13.03.2018</b>	<b>Date of Pronouncement : 14.03.2018</b>
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**ORDER**

This is an appeal by the assessee against the order dated 27.12.2016 of Id. CIT(A)-1, Patna.

2. The main grievance of the assessee vide Ground Nos. 2 & 3 relates to the *ex-parte* order passed by the Id. CIT(A) without serving the notice of hearing and dismissal of the appeal in *limine*.

4. Facts of the case in brief are that the assessee e-filed the return of income on 22.03.2013 declaring an income of Rs.4,29,940/-. However, the assessment was framed by the AO at an income of Rs.26,22,912/- by making the various additions.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) who dismissed the appeal in *limine* for non-prosecution. He simply stated that the last notice was issued on 15.12.2016 for hearing on 26.12.2016 but there was no compliance.

6. Now the assessee is in appeal. The ld. Counsel for the assessee submitted that no notice for hearing was received by the assessee, therefore, he was prevented by sufficient and reasonable cause for making representation.

7. In his rival submissions, the ld. Sr. DR supported the impugned order passed by the ld. CIT(A).

8. I have considered the submissions of both the parties and carefully gone through material available on record. In the present case, it is an admitted fact that the ld. CIT(A) had not discussed the issue on merit and dismissed the appeal of the assessee in *limine* for non-prosecution. He simply stated that the notice issued was not complied by the assessee and latest one was issued on 15.12.2016 for hearing on 26.12.2016. However, nothing is brought on record to substantiate that the notice of hearing was served upon the assessee. It is well settled that nobody should be condemned unheard as per the *maxim "audi alteram partem"*. I, therefore, considering the totality of the facts of the present case, deem it appropriate to set aside this case 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.

8. In the result, the appeal of the assessee is allowed for statistical purposes.  
(Order Pronounced in the Court on 14/03/2018)

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

**Dated: 14/03/2018**

\*Subodh\*

Copy forwarded to:

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