

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

Before Sh. N. K. Saini, AM and Sh. Sudhanshu Srivastava, JM

ITA No. 27/Pat./2017 : Asstt. Year : 2012-13

Sh. Amitesh Ranjan, Near Sona Palace, Sheikhpura, Patna-14	Vs	Income Tax Officer, Ward-4(1), Patna
(APPELLANT)		(RESPONDENT)
PAN No. AHIPR3978B		

**SA No. 02/Pat./2018
(in ITA No. 27/Pat./2017 : Asstt. Year : 2012-13)**

Sh. Amitesh Ranjan, Near Sona Palace, Sheikhpura, Patna-14	Vs	Income Tax Officer, Ward-4(1), Patna
(APPELLANT)		(RESPONDENT)
PAN No. AHIPR3978B		

**Assessee by : Sh. Manish Rastogi, Adv.
Revenue by : Sh. Kausik Kumar Das, Sr. DR**

Date of Hearing : 13.03.2018	Date of Pronouncement : 15.03.2018
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ORDER

Per N. K. Saini, AM:

The appeal has been filed by the assessee against the order dated 24.01.2017 passed by the Id. CIT(A)-2, Patna. The assessee also moved Stay Application for the stay of outstanding demand of Rs.12,59,355/-.

2. Following grounds have been raised in this appeal:

“1. For that the Commissioner of Income-tax (Appeals)-2, Patna, [‘the CIT(A)’] erred on facts and in law in dismissing the appeal filed by the appellant ex-parte by confirming the assessment order passed by the Income Tax Officer, Ward-4(1), Patna. (‘the AO’), assessing the appellant under section 143(3) of the Income-tax Act, 1961, (‘the Act’) at an income of Rs.50,06,010/-, as against returned income of Rs.8,88,990/-.

2. For that the learned CIT(A) has erred in not going in the merits of the addition made by the assessing officer and has wrongly dismissed the appeal on the ground of non-compliance, which is wrong, illegal and unjustified.

3. For that the learned CIT(A) has erred in confirming the addition made by the AO on account of cash received from mother amounting to Rs.21,55,000/- is wrong, illegal and unjustified.

4. For that the learned CIT(A) has erred in sustaining the disallowance made by the AO to the extent of 10% of various expenses, amounting to Rs.19,62,026/-, in the facts and circumstances of the case, which is wrong, illegal and unjustified.

5. That the whole order passed by the CIT(A) is bad in facts and law.

6. That the CIT(A) has erred in not allowing proper opportunity of being heard which is wrong, illegal and unjustified.

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

3. Vide Ground Nos.1, 2 & 6, the grievance of the assessee relates to the dismissal of the appeal *ex-parte* without going in the merits of the case and not allowing opportunity of being heard to the assessee.

4. Facts of the case in brief are that the assessee e-filed the return of income on 13.08.2013 declaring an income of Rs.8,88,990/-. Later on, the case was selected for scrutiny. The AO made the addition of Rs.21,55,000/- on account of gift received

from the mother by the assessee and Rs.19,62,026/- on account of ad-hoc disallowance of the expenses. Accordingly, the income was assessed at Rs.50,06,010/-.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) who dismissed the appeal in *limine* for non-prosecution.

6. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that no notice of hearing was received by the assessee as alleged by the Id. CIT(A) and when the last notice dated 28.12.2016 was issued and received by the assessee, a request was made to adjourn the case for second week of the January but the Id. CIT(A) without communicating the rejection of the application to the assessee, dismissed the appeal in *limine* without discussing the appeal on merit.

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

8. 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 an admitted fact that the Id. CIT(A) did not adjudicate the issues on merit and dismissed the appeal of the assessee in *limine*. He has also not given the reasons for rejecting the request of the assessee for adjournment. In our opinion, a due and reasonable opportunity of being heard had not been afforded by the Id. CIT(A). It is well settled that nobody should be condemned unheard as per the *maxim* "*audi alteram partem*". We, therefore, considering the totality of the facts of the present case, deem it appropriate to set aside these cases 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. Since, we have decided the appeal of the assessee, therefore, the Stay Application moved by the assessee becomes infructuous. Accordingly, the same is dismissed.

10. In the result, the appeal of the assessee is allowed for statistical purposes and Stay Application is dismissed as infructuous.

(Order Pronounced in the Court on 15/03/2018)

Sd/-
(Sudhanshu Srivastava)
JUDICIAL MEMBER

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

Dated: 15/03/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR