

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

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

ITA No. 142/Pat./2017 : Asstt. Year : 2013-14

Janardan Prasad, Flat No. 401, Capital Tower, Fraser Road, Patna-800001	Vs	Asstt. Commissioner of Income Tax, Circle-4, Patna
(APPELLANT)		(RESPONDENT)
PAN No. AAUPP9710E		

Assessee by : Sh. D. V. Pathy, Adv.

Revenue by : Sh. Kaushik Kumar Das, Sr. DR

Date of Hearing : 13.03.2018

Date of Pronouncement : 14 .03.2018
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 25.01.2017 of Id. CIT(A)-2, Patna.

2. Following grounds have been raised in this appeal:

“i) For that the grounds of appeal hereto are without prejudice to each other.

ii) For that the order of the Id. assessing officer and also the learned Commissioner of Income Tax (Appeals)-2 is bad both in law and on facts.

iii) For that the order of the Id. assessing officer learned Commissioner of Income Tax (Appeals) - 2 is based on presumptions, surmises and conjectures.

iv) For that the order of the Id. assessing officer and also the learned Commissioner of Income Tax (Appeals) - 2 is further violative of the settled principles of natural justice in as much as no opportunity much less

adequate opportunity was ever afforded to the applicant to furnish its defence in course of proceedings.

v) For that the order of Id. assessing officer and also the learned Commissioner of Income Tax (Appeals) - 2 is wholly perverse in as much as the same are contrary to and at variance with the materials available on records.

vi) For that the learned Commissioner of Income Tax (Appeal)-2 Patna has erred in dismissing the appeal in limine on the ground of non-compliance to the notices issued by him notwithstanding the fact that the failure to enter appearance in appellate proceeding was due to a reasonable cause.

vii) For that the Id. assessing officer has erred in disallowing a sum of Rs.66,34,863.00 under section 80 (IA) of the Act merely on the ground that the appellant is an individual and is not eligible to claim deduction under the said provision of law.

viii) For that the Id. assessing officer has erred in adding a sum of Rs.19,93,640/- merely on the ground that the appellant had failed to establish the credit worthiness of Shri. Nathuni Prasad.

ix) For that the Id. assessing officer has erred in disallowing a sum of Rs.1,05,02,245.00 under section 40 (a) (ia) of the Act merely on the ground that tax at source was not deducted on payments made to sub-contractors.

x) For that in any view of the matter the order of the Id. assessing officer to the extent aforesaid is otherwise bad in law and as such are fit to be set aside.

xi) For that other various reasons which may be urged at the time of hearing.”

3. From above grounds, it is gathered that the main grievance of the assessee relates to the dismissal of the appeal by the Id. CIT(A) *ex-parte* in *limine*.

4. Facts of the case in brief are that the assessee filed the return of income on 01.10.2013 declaring a total income of Rs. Nil. Later on, the case was selected for scrutiny under 'CASS' and a notice u/s 143(2) of the Income Tax Act, 1961 was issued on 15.09.2014. The AO framed the assessment at an income of Rs.1,90,95,750/- by making the addition of Rs.1,05,02,245/- u/s 40(a)(ia) of the Income Tax Act, 1961 and Rs.19,93,640/- on account of unsecured loans. Against the said order, the assessee filed an appeal before the Id. CIT(A) who dismissed the appeal *ex-parte* in *limine*.

5. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that no opportunity of being heard was given by the Id. CIT(A) and the issue has not been decided on merit.

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

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 an admitted fact that the Id. CIT(A) passed the *ex-parte* order and dismissed the appeal of the assessee in *limine* without discussing the issue on merit. It is also not brought on record that the notice for hearing was served upon the assessee. 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 this issue 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 14/03/2018)

Sd/-
(Sudhanshu Srivastava)
JUDICIAL MEMBER

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

ASSISTANT REGISTRAR