

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

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

ITA No. 57/Pat./2017 : Asstt. Year : 2011-12

Vijay Kumar Pandav, Chukti Mansi, Distt. Khagaria-851214	Vs	Income Tax Officer, Ward-6(4), Patna
(APPELLANT)		(RESPONDENT)
PAN No. AGAPP0171D		

**Assessee by : Sh. Manish Kumar Pandey, Adv.
Revenue by : Sh. Kausik 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. The only grievance of the assessee in this appeal relates to the sustenance of penalty of Rs.37,35,760/- levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') by passing the *ex-parte* order.

3. Facts of the case in brief are that the AO framed the assessment at an income of Rs.1,28,95,143/- by adding Rs.1,20,99,812/- as an unexplained cash deposit u/s 40A(3) of the Act vide assessment order dated 29.03.2014. The AO also initiated the penalty proceedings u/s 271(1)(c) of the Act. Since the assessee had not complied to the notices issued, the AO levied the penalty

of Rs.37,35,760/- u/s 271(1)(c) of the Act vide order dated 26.09.2014.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who dismissed the appeal in *limine* by observing that sufficient opportunity of being heard had been allowed to the assessee but there was no compliance.

5. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that no notice of hearing was received by the assessee. Therefore, the Id. CIT(A) was not justified in dismissing the appeal. It was also stated that the Id. CIT(A) had not decided the issue 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 noticed from the face of the impugned order that the Id. CIT(A) mentioned as under:

*“Date of hearing: None
Present for the Appellant: None
Present for the Department: None”*

8. From the above noting, it is clear that no opportunity of being heard was given. The Id. CIT(A) simply stated that the notices were issued for hearing but there was no compliance. However, he has not mentioned as to whether any of the notice issued 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 ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

9. 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

		Date	<u>Initial</u>	
1.	Draft dictated on	13.03.2018		PS
2.	Draft placed before author	14.03.2018		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			