

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

Before Sh. N. K. Saini, Accountant Member

ITA No. 132/Pat./2017 : Asstt. Year : 2008-09

M/s Ashoka Auto Enterprises Pvt. Ltd., Exhibition Road, Patna-1	Vs	ACIT, Circle-2, Patna
(APPELLANT)		(RESPONDENT)
PAN No. AACCA9482D		

**Assessee by : Sh. Rakesh Kumar, Adv.
Revenue by : Sh. Abhay Kumar, Sr. DR**

Date of Hearing : 14.03.2018	Date of Pronouncement : 16 .03.2018
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ORDER

This is an appeal by the assessee against the order dated 14.06.2017 of ld. CIT(A)-1, Patna.

2. Following grounds have been raised in this appeal:

"1. For that the ld. CIT(A) has erred in dismissing the appeal for its non-prosecution by the appellant.

2. For that the ld. CIT(A) has erred in holding that the appellant was allowed sufficient opportunity of being heard, however, there was no compliance in response to the various notices issued for hearing.

3. For that the ld. CIT(A) has failed to bring on record any evidence or material regarding service of notices on the appellant.

4. For that the order passed is violative of principles of equity, natural justice and fair play.

5. For that the whole order is bad in fact and law of the case and is fit to be restored back to the CIT(A) for deciding the appeal afresh after providing opportunity of being heard to the appellant.

6. For that other grounds, if any, shall be urged at the time of hearing of the appeal.”

3. The main grievance of the assessee relates to the dismissal of the appeal for non-prosecution without providing sufficient opportunity of being heard.

4. Facts of the case in brief are that the assessee filed the return of income on 28.11.2008 showing loss of Rs.80,38,556/- which was processed u/s 143(1) of the Income Tax Act, 1961. Later on, the case was selected for scrutiny and the AO framed the assessment at an income of Rs.38,56,060/- by making the various additions/disallowance.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) who dismissed the appeal *ex-parte* in *limine* stating that the notice issued were not complied by the assessee.

6. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that no notice for hearing was served upon the assessee and that the Id. CIT(A) had not decided the issues on merit.

7. In his rival submissions, the Id. Sr. DR strongly supported the order of the AO.

8. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that the Id. CIT(A) dismissed the appeal of the assessee in *limine* and had not decided the issues on merit. He simply stated that the notices were not complied by the assessee and the latest notice was issued on 01.02.2017 for fixing the date of hearing on 14.02.2017. However, it is not brought on record to substantiate that any of the notices issued by the Id. CIT(A) 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 case 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. In the result, the appeal of the assessee is allowed for statistical purposes.
(Order Pronounced in the Court on 16 /03/2018)

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

Dated: 16 /03/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR