

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

Before Sh. N. K. Saini, Accountant Member

ITA No. 127/Pat./2017 : Asstt. Year : 2012-13

Smt. Pammi Prasad, Yadav Bhawan, Naya Tola, Patna	Vs	Income Tax Officer, Ward-1(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 28.06.2017 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 deciding the appeal ex-parte.

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 indicating the dates on which the notices were issued/served and/or non-compliance made.

4. For that the ld. CIT(A) has erred in deciding the appeal without giving proper and adequate opportunity of being heard to the appellant.

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

6. For that the ld. CIT(A) has erred in sustaining the addition of Rs.7,00,000/- on account of alleged receipt of x-ray machine.

7. For that the ld. CIT(A) has failed to appreciate that the AO has restored to estimation by extrapolation the receipts while making addition of Rs.7,00,000/-.

8. For that the ld. CIT(A) has erred in relying on the judicial precedence that too without providing any opportunity of being heard.

9. For that the ld. CIT(A) has erred in upholding the disallowance of commission of Rs.22,080/- on the ground that the same remain unverified.

10. For that the ld. CIT(A) has erred in upholding addition of Rs.50,000/- on account of alleged director's remuneration from Patliputra Divine Hospital Pvt. Ltd.

11. For that the sustenance of additions/disallowances by the ld. CIT(A) is wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.

12. For that the whole order is bad in fact and law of the case and is fit to be modified.

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

3. Vide Ground Nos. 2 to 5, the main grievance of the assessee relates to the *ex-parte* order passed by the ld. CIT(A) without providing an opportunity of being heard.

4. Facts of the case in brief are that the assessee filed the return of income on 18.04.2013 showing income of Rs.8,97,850/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). In this case a survey was conducted in the premises of the assessee on 27.03.2012, therefore, the case was selected for scrutiny. The AO framed the assessment at an income of Rs.16,69,930/- by making the addition of Rs.7,00,000/- on account of estimated receipt from Digital X-ray, Rs.22,080/- out of the commission paid and Rs.50,000/- out of the remuneration paid to the director.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) who decided the appeal *ex-parte* and sustained the additions made by the AO.

6. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that no notice for hearing was served upon the assessee. Therefore, the Id. CIT(A) was not justified in confirming the addition made by the AO by passing the *ex-parte* order.

7. In his rival submissions, the Id. Sr. DR supported the orders of the authorities below.

8. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it is noticed that on the face of the impugned order, the Id. CIT(A) mentioned that none was present on behalf of the appellant (assessee) and the department. The Id. CIT(A) did not mention that any notice for hearing was issued and 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