

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

Before Sh. N. K. Saini, Accountant Member

ITA No. 128/Pat./2016 : Asstt. Year : 2010-11

Ambuja Ballav Samantray, Flat No. A/74, Ashoka Place, Exhibition Road, Patna-800001	Vs	Income Tax Officer, Ward-4(1), Patna
(APPELLANT)		(RESPONDENT)
PAN No. ASMPS4818G		

**Assessee by : Sh. A. K. Rastogi, Rakesh Kumar &
Sh. A. K. Agrawal, Advs.
Revenue by : Sh. Abhay Kumar, Sr. DR**

Date of Hearing : 07.03.2018	Date of Pronouncement : 08.03.2018
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ORDER

This is an appeal by the assessee against the order dated 30.09.2016 of Id. CIT(A)-2, Patna.

2. Following grounds have been raised in this appeal:

"1. For that the learned CIT(Appeals) has erred in assessing the passing the order ex-parte when the assessee was not available on his address since last one year.

2. For that the learned CIT(Appeals) erred in treating the whole amount deposited in the bank account of the assessee as undisclosed investment of the assessee as the same were of various clients and accepted by the assessee to invest on behalf of them.

3. For that the learned CIT(Appeals) erred in ignoring the application of amount deposited as the same were utilized for investing in various deposits/shares on behalf of various clients.

4. For that the learned CIT(Appeals) has erred in appreciating the facts.

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

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 vide Ground No. 1, relates to the *ex-parte* order passed by the Id. CIT(A).

4. Facts of the case in brief are that the assessee filed the return of income on 23.07.2010 showing total income of Rs.5,73,680/-. Later on, the case was selected for scrutiny. The AO made the addition of Rs.35,19,946/- u/s 69 of the Income Tax Act, 1961 (hereinafter referred to as the Act) on account of deposits on various dates in the different bank accounts maintained by the assessee.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) who sustained the addition by passing the *ex-parte* order. The Id. CIT(A) mentioned that the notice for hearing was issued to the assessee fixing the last date of hearing on 04.08.2016 but nobody appeared on the date of hearing.

6. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that no notice for hearing was received by the assessee. Therefore, the Id. CIT(A) was not justified in deciding the appeal *ex-parte* without giving an opportunity of being heard to the assessee.

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

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 the Id.

CIT(A) mentioned that various notice were issued to the assessee for hearing and there was no compliance. However, it is not brought on record that any of the notice issued to the assessee was served upon the assessee. It is well settled that nobody should be condemned unheard as per the *maxim* “*audi alteram partem*”. I, 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 08/03/2018)

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

Dated: 08/03/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR