

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

Before Sh. N. K. Saini, Accountant Member

ITA No. 08/Pat./2018 : Asstt. Year : 2012-13

M/s Agarwal Motor Stores, Kachehari Station, Siwan	Vs	Income Tax Officer, Ward-1, Siwan
(APPELLANT)		(RESPONDENT)
PAN No. AAKFA9650J		

Assessee by : None

Revenue by : Sh. Abhay Kumar, Sr. DR

Date of Hearing : 09.03.2018	Date of Pronouncement : 12.03.2018
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ORDER

This is an appeal by the assessee against the order dated 17.10.2017 of Id. CIT(A)-1, Jamshedpur.

2. Following grounds have been raised in this appeal:

"1. For that the CIT(A) could not give opinion on the order of the AO who estimated income of Rs.10,36,794/- from the business of petroleum product by adopting a net profit @ 0.62% of the turnover of Rs.16,72,24,840/-. Therefore he erred on this issue.

2. For that the CIT(A) could not give opinion on not allowing deduction from the total income of an amount of Rs.2,00,000 the sum paid to partners toward salary.

3. For that the CIT(A) erred in not giving opinion on an income of Rs.60,000 from tanker plying the amount estimated by the AO.

4. For that any other ground at the time of hearing of appeal.”

3. Facts of the case in brief are that the assessee filed the return of income on 03.04.2013 declaring an income of Rs.56,550/-. Later on, the case was selected for scrutiny. The AO framed the assessment at an income of Rs.9,15,816/-.

4. Being aggrieved the assessee carried the matter to the ld. CIT(A) who dismissed the appeal by observing as under:

“Statutory notices were issued for fixing the date of hearing on 07.09.2016, 25.01.2017 and 12.10.2017. On the said dates none attended, no details were filed and also no adjournment letter was filed by the appellant.

2. In the result, the appeal is dismissed for statistical purposes.”

5. Now the assessee is in appeal. Nobody was present on behalf of the assessee neither any adjournment was sought. We, therefore, proceeded the *ex-parte* and the appeal is decided after hearing the ld. Sr. DR.

6. I have considered the submissions of ld. Sr. DR and the material available on the record. In the present case, it is an admitted fact that the appeal of the assessee was dismissed by the ld. CIT(A) in limine without discussing the issue on merit. It is also noticed that the ld. CIT(A) nowhere mentioned 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*”. 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 ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 12/03/2018)

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

Dated: 12/03/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR