

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

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

ITA No. 158/Pat./2017 : Asstt. Year : 2010-11

ITA No. 159/Pat./2017 : Asstt. Year : 2011-12

Dr. Naresh Kumar Bhimsaria, 402, Ashiyana Vihar, Rajendra Path, Near CDA Building, Patna-800003	Vs	Income Tax Officer, Ward-1(1), Patna
(APPELLANT)		(RESPONDENT)
PAN No. ACNPB0065F		

Assessee by : Sh. D. V. Pathy, Adv.

Revenue by : Sh. Abhay Kumar, Sr. DR

Date of Hearing : 15.03.2018

Date of Pronouncement : 15.03.2018

ORDER

Per N. K. Saini, AM:

These two appeals by the assessee are directed against the separate order dated 15.02.2017 and 25.01.2017 for the assessment years 2010-11 and 2011-12 respectively passed by Id. CIT(A)-1, Patna.

2. Since, the appeals relate to the same assessee which were heard together, so, these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. The Registry has pointed out that both these appeals are barred by limitation. The assessee moved applications for condonation of delay by taking the common plea for both the years and stated as under:

“Most Respectfully Sheweth

1. That this is an application for condonation of delay in filing of the present appeal.

2. That the appellant states that the order in appeal has been passed by the learned Commissioner of Income Tax (Appeal) on 25.01.2017. The order in appeal was however not served on the appellant.

3. That the appellant states that on coming to know that an order in appeal has been passed he filed an application before the learned Commissioner of Income Tax (Appeal) on 09.06.2017 requesting him to provide a copy of the order in appeal passed by him in order that it may file an appeal before the Hon’ble Tribunal.

4. That the appellant states that not hearing from the learned Commissioner of Income Tax (Appeal) it again filed a petition to the same effect on 25.07.2017.

5. That the appellant even after filing the 2nd petition did not receive a certified copy of the order. The appellant again requested the learned Commissioner of Income Tax (Appeal) to the same effect on 30.08.2017.

6. That the appellant states that the certified copy of the order was served on it through the clerk of the counsel Shri D. V. Pathy, Advocate on 23.09.2017.

7. That the appellant states that after receipt of certified copy of the order the counsel undertook to prepare the memo of appeal to be filed before this Hon’ble Tribunal. The appellant states that as ill luck would have it he suffered a major heart attack on 06.09.2017 and underwent bypass surgery at Delhi on 04.10.2017. The appellant after recovery from such surgery has now paid the court fee and signed the memorandum of appeal to be filed before this Hon’ble Tribunal.

8. That the appellant states that the delay in filing of the appeal has thus been caused due to a reasonable cause. The

appellant submits that since the delay has been caused due to a reasonable cause the same be condoned and the appeal be heard on merits.”

It is prayed accordingly,

*Sd/-
submitted by,*

4. During the course of hearing, the Id. Counsel for the assessee reiterated the contents of the aforesaid applications and requested to admit the appeals by condoning the delay. In support of the aforesaid contention, the Id. Counsel for the assessee drew our attention towards the letters written to the Id. CIT(A)-1, Patna dated 09.06.2017, 25.07.2017 and 30.08.2017 for each of the assessment years 2010-11 and 2011-12 (copies of which are annexed with the application for condonation of delay and are placed on record).

5. In his rival submissions, the Id. Sr. DR although opposed the applications for condonation of delay but could not controvert the aforesaid contention of the assessee.

6. After considering the submissions of both the parties, we are of the view that there was a reasonable cause for filing the appeals belated. We, therefore, condone the delay and the appeals are admitted.

7. In these appeals, the assessee although raised 15 grounds for the assessment year 2010-11 and 14 grounds for the assessment year 2011-12. However, the main grievance vide Ground Nos. 4 to 7 relates to the dismissal of the appeals in *limine* by passing an *ex-parte* order without affording an opportunity of being heard to the assessee.

8. Facts of the case in brief are that the assessee derived income from medical profession, other sources and capital gains. The return of income was filed on 31.07.2010, declaring an income of Rs.3,68,370/- for the assessment year 2010-11. Later on, the case was selected for scrutiny. The AO framed the assessment at an income of Rs.14,20,878/- by making the various additions. Similarly, for the assessment year 2011-12, the assessee filed the return of income on 30.07.2011 showing total income of Rs.4,77,690/-. However, the income was assessed by the AO at Rs.8,21,416/-.

9. Being aggrieved the assessee carried the matter to the Id. CIT(A) who dismissed the appeal in *limine* by stating that the notices issued were not complied by the assessee.

10. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that no notice for hearing was received by the assessee and even the copy of the *ex-parte* order was not served upon the assessee. Therefore, the assessee had written three letters to the Id. CIT(A) to supply the copy of the order. It was also stated that the Id. CIT(A) did not adjudicate the issues on merit.

11. In his rival submissions, the Id. Sr. DR submitted that the assessee did not cooperate, therefore, there was no other way except to dismiss the appeals of the assessee for non-prosecution. He supported the impugned orders passed by the Id. CIT(A).

12. 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 an admitted fact that the Id. CIT(A) passed the

impugned orders *ex-parte*. He simply stated that the notices were issued fixing the date of hearing which remained non-complied. The latest notice was issued on 01.02.2017 fixing the date of hearing on 14.02.2017. In the instant case, nothing is brought on record to substantiate that any of the notices issued for hearing 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 these cases 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.

13. In the result, the appeals of the assessee are allowed for statistical purposes.

(Order Pronounced in the Court on 15/03/2018)

Sd/-
(Sudhanshu Srivastava)
JUDICIAL MEMBER

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

Dated: 15/03/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR