

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.1062/Bang/2018
Assessment Year :2010-11

Shri Mahaboob Basha .K, D.No. 6-2-187, Kovur Nagar, Anantapur District, Andhra Pradesh – 515 004.  <b>PAN: AWPVK6079L</b>	Vs.	The Income Tax Officer, Ward – 5 (3) (2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Omar Abdullah S M, CA
Respondent by	:	Shri Abdul Hakeem .M, JCIT (DR)

Date of hearing	:	25.04.2018
Date of Pronouncement	:	04.05.2018

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee which is directed against the order of Id. CIT(A)-5, Bangalore dated 22.02.2018 for Assessment Year 2010-11.

2. The grounds raised by the assessee are as under.

*“1. The Order of the learned CIT (A) is opposed to law, facts and circumstances of the case.*

*2. The order of the Ld. AO and Ld. CIT (A) is passed in haste, without providing sufficient and reasonable opportunity of being heard.*

*3. The Order is passed against the principle of natural justice and thus liable to be quashed.*

*4. The Ld. CIT(A) erred in coming to the conclusion that the Appellant was not interested in pursuing the appeal. In doing so, the Ld. CIT(A) erred in ignoring the adjournment letters by the Appellant and completing the appellate proceedings for want of prosecution.*

*5. The Ld. AO erred in treating an amount of Rs. 22,89,900/- deposited in a third party's account as income of the Appellant and adding it to his Returned Income.*

*6. Notwithstanding the above, the Ld. AO erred in making the addition under the head -come from Other Sources.*

*7. The Ld. AO ought to have appreciated that there is no nexus between the amount deposited in a third party's account and the Appellant*

*8. The Ld. AO failed in appreciating that it is a pure case of mis-quoting of PAN.*

*9. The Ld. AO erred in completing the assessment on mere assumptions and surmises without conducting any enquiry.*

*10. The Ld. AO erred in charging interest u/s 234A and 234B of the Act, when the appellant was not obliged to pay any such interest.*

*The Appellant seeks the leave of the Hon'ble ITAT to add, alter, amend or delete any of the grounds urged at the time of hearing.”*

3. At the very outset, it was submitted by Id. AR of assessee that the impugned order of CIT(A) is ex-parte qua the assessee. He further submitted that it is noted by CIT(A) in para 5 of his order that several notices were issued by him on 19.04.2016, 20.09.2017 and 17.01.2018 but the assessee has not even made application for adjournment of the hearing. He submitted that this is not correct and in this regard, he drawn my attention to page 13 of paper book which contains copy of email sent by assessee to CIT(A) on 16.01.2018 in which it was requested by assessee that he cannot attend the hearing fixed on 17.01.2018 because the assessee was out of town on a family medical situation and therefore, the hearing may be adjourned to any date in February 2018. He submitted that in spite of this, Id. CIT(A) has disposed of the appeal without granting any further opportunity although the impugned order is passed by him on 22.02.2018. He submitted that in the interest of justice, the matter may be restored back to the file of CIT(A) for fresh decision after providing adequate opportunity of being heard to assessee. The Id. DR of revenue supported the order of CIT(A).
4. I have considered the rival submissions. I find that this is noted by CIT(A) in para 5 of the impugned order that the last date of hearing fixed is 17.01.2018 and as per the Id. CIT(A), no reply was filed by assessee to this hearing notice

and no request was made for adjournment. But as per copy of email dated 16.01.2018, it was requested by assessee to adjourn this hearing fixed on 17.01.2018 and to fix the same in February 2018. Under these facts, I feel it proper that in the interest of justice, this matter should go back to the file of CIT(A) for fresh decision. Accordingly, I set aside the order of CIT(A) and restore the matter back to his file for fresh decision after providing reasonable opportunity of being heard to both sides. In view of this, no adjudication is called for regarding the merit of the case at the present stage.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes. Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 04<sup>th</sup> May, 2018.  
/MS/

Copy to:  
1. Appellant  
2. Respondent  
3. CIT  
4. CIT(A)  
5. DR, ITAT, Bangalore  
6. Guard file

By order

Senior Private Secretary,  
Income Tax Appellate Tribunal,  
Bangalore.