

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

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER AND
PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.142/Ran/2017: Assessment Year: 1991-1992
ITA No.143/Ran/2017: Assessment Year: 1992-1993
ITA No.144/Ran/2017: Assessment Year: 1991-1992
ITA No.145/Ran/2017: Assessment Year: 1992-1993

Md Sanaul Haque, Behind Madhuban Market, Main Road, Ranchi.	Vs.	ACIT, Central Circle-2, Mahabir Tower, Main Road, Ranchi
PAN/GIR No. AAUPH 6741 D		
(Appellant)	..	(Respondent)

Assessee by: Shri M.K.Choudhary, Adv
Revenue by : Shri P.K.Mondal, JCIT

Date of Hearing : 29/05/ 2018
Date of Pronouncement : 30 /05/ 2018

ORDER

Per N.S.Saini, AM

These are appeals filed by the assessee against the order of the CIT(A)-3, patna dated 28.4.2017 for the assessment years 1991-92 and 1992-93 under section 147/144 of the Act.

2. The assessee has raised the following grounds of appeal in different assessment years as under:

ITA No.142/Ran/2017 : 1991-92

"1. For that Ld. CIT(Appeals) was not justified in passing a non-speaking ex parte order on the pretext of non-prosecution, without giving reasonable opportunity of hearing, even though the appellant had filed detailed Facts of the case and Grounds of appeal. In any view of the matter Ld. CIT(Appeals) should have passed an speaking order on the grounds raised by the appellant.

2. For that Ld. CIT(Appeals) erred in not appreciating that notice issued u/s 148 was beyond Time Limit of 10 / 6 years prescribed under section 149. As such the order passed was liable to be quashed.

3. For that Ld. CIT(Appeals) erred in not appreciating that passing of two identical assessment orders on the same day, one u/s 147/144 and the other protective order u/s 144 for the same year and also beyond the period of limitation prescribed u/s 153 is unjustified, uncalled for and liable to be quashed.

4. For that Ld. AO was unjustified in making addition of additional income disclosed before ITSC Rs.1,06,840/- which was disclosed to have peace of mind. There is no evidence on record which could suggest that the appellant had, besides the income disclosed in the return, any other income other than the supplies made, the amount of which stands accepted by the department.

5. For that Ld. AO was unjustified in making addition of income from unexplained sources in respect of peak credit of Rs.18,00,253/- in respect of amount lying in the saving bank account no.33211 maintained with SBI, Doranda Branch, Ranchi, of the assessee. The amount was duly explained. Even this addition neither formed part of the recorded reason u/s 148(2). As such no addition whatsoever could have been made in respect of these amounts in assessment u/s 147. No reasonable opportunity was allowed to explain the same.

6. For that the AO was unjustified in charging interest u/s.234B(3) on the tax payable on assessed income instead of tax payable on returned income. The same suffers from other mistake also."

ITA No.143/Ran/2017 : 1992-1993

"1. For that Ld. CIT(Appeals) was not justified in passing a non-speaking ex parte order on the pretext of non-prosecution, without giving reasonable opportunity of hearing, even though the appellant had filed detailed Facts of the case and Grounds of appeal. In any view of the matter Ld. CIT(Appeals) should have passed an speaking order on the grounds raised by the appellant.

2. For that Ld. CIT(Appeals) erred in not appreciating that notice issued u/s 148 was beyond Time Limit of 10 / 6 years prescribed under section 149. As such the order passed was liable to be quashed.

3. For that Ld. CIT(Appeals) erred in not appreciating that passing of two identical assessment orders on the same day, one u/s 147/144 and the other protective order u/s 144 for the same year and also beyond the period of limitation prescribed u/s 153 is unjustified, uncalled for and liable to be quashed.

4. For that Ld. AO was unjustified in making addition of additional income disclosed before ITSC Rs.1,99,800/- which was disclosed to have peace of mind. There is no evidence on record which could suggest that the appellant had, besides the income disclosed in the return, any other income other than the supplies made, the amount of which stands accepted by the department.

5. For that Ld. AO was unjustified in making addition of income from unexplained sources in respect of peak credit of Rs.34,12,002/- in respect of amount lying in the saving bank account no.33211 maintained with SBI, Doranda Branch, Ranchi, of the assessee. The amount was duly explained. Even this addition neither formed part of the recorded reason u/s 148(2). As such no addition whatsoever could have been made in respect of these amounts in assessment u/s 147. No reasonable opportunity was allowed to explain the same.

6. For that the AO was unjustified in charging interest u/s.234B(3) on the tax payable on assessed income instead of tax payable on returned income. The same suffers from other mistake also."

ITA No.144/Ran/2017 : 1991-1992

"1. For that Ld. CIT(Appeals) was not justified in passing a non-speaking exparte order on the pretext of non-prosecution, without giving reasonable opportunity of hearing, even though the appellant had filed detailed Facts of the case and Grounds of appeal. In any view of the matter Ld. CIT(Appeals) should have passed an speaking order on the grounds raised by the appellant.

2. For that Ld. CIT(Appeals) erred in not appreciating that notice issued u/s 148 was beyond Time Limit of 10 / 6 years prescribed under section 149. As such the order passed was liable to be quashed.

3. For that Ld. CIT(Appeals) erred in not appreciating that passing of two identical assessment orders on the same day, one u/s 147/144

and the other protective order u/s 144 for the same year and also beyond the period of limitation prescribed u/s 153 is unjustified, uncalled for and liable to be quashed.

4. For that Ld. CIT(A) erred in not appreciating that the order passed u/s.144 is non-est and without jurisdiction and liable to be quashed because no valid notice u/s.143(2) within the limitation period was ever issued before passing of the impugned exparte assessment order, on the basis of return of income filed on 26.2.1993. The time limit for issue of notice u/s.143(2) expired on 31.7.2015.

5. For that Ld. AO was unjustified in making addition of additional income disclosed before ITSC Rs.1,06,840/- which was disclosed to have peace of mind. There is no evidence on record which could suggest that the appellant had, besides the income disclosed in the return, any other income other than the supplies made, the amount of which stands accepted by the department

6. For that Ld. AO was unjustified in making addition of income from unexplained sources in respect of peak credit of Rs.18,00,253/- in respect of amount lying in the saving bank account no.33211 maintained with SBI, Doranda Branch, Ranchi, of the assessee. The amount was duly explained.

7. For that the AO was unjustified in charging interest u/s.234B(3) on the tax payable on assessed income instead of tax payable on returned income. The same suffers from other mistake also."

ITA No.145/Ran/2017 : 1992-1993

"1. For that Ld. CIT(Appeals) was not justified in passing a non-speaking exparte order on the pretext of non-prosecution, without giving reasonable opportunity of hearing, even though the appellant had filed detailed Facts of the case and Grounds of appeal. In any view of the matter Ld. CIT(Appeals) should have passed an speaking order on the grounds raised by the appellant.

2. For that Ld. CIT(Appeals) erred in not appreciating that notice issued u/s 148 was beyond Time Limit of 10 / 6 years prescribed under section 149. As such the order passed was liable to be quashed.

3. For that Ld. CIT(Appeals) erred in not appreciating that passing of two identical assessment orders on the same day, one u/s 147/144 and the other protective order u/s 144 for the same year and also

beyond the period of limitation prescribed u/s 153 is unjustified, uncalled for and liable to be quashed.

4. For that Ld. CIT(A) erred in not appreciating that the order passed u/s.144 is non-est and without jurisdiction and liable to be quashed because no valid notice u/s.143(2) within the limitation period was ever issued before passing of the impugned exparte assessment order, on the basis of return of income filed on 26.2.1993. The time limit for issue of notice u/s.143(2) expired on 31.7.2015.

5. For that Ld. AO was unjustified in making addition of additional income disclosed before ITSC Rs.1,99,800/- which was disclosed to have peace of mind. There is no evidence on record which could suggest that the appellant had, besides the income disclosed in the return, any other income other than the supplies made, the amount of which stands accepted by the department

6. For that Ld. AO was unjustified in making addition of income from unexplained sources in respect of peak credit of Rs.34,12,002/- in respect of amount lying in the saving bank account no.33211 maintained with SBI, Doranda Branch, Ranchi, of the assessee. The amount was duly explained.

7. For that the AO was unjustified in charging interest u/s.234B(3) on the tax payable on assessed income instead of tax payable on returned income. The same suffers from other mistake also."

3. At the outset, Id A.R. of the assessee referred to the CIT(A)'s orders and submitted that the CIT(A) dismissed the appeals of the assessee exparte without considering the merits of the case and prayed that one more opportunity should be granted to the assessee to present his case before the CIT(A).

4. Ld D.R. vehemently opposed to the granting of another opportunity to the assessee before the CIT(A) and submitted that sufficient opportunities have been allowed by the CIT(A) and the assessee has failed to comply with

the same and, therefore, no mercy should be shown to the assessee at this stage of proceedings.

5. After considering the rival submissions and perusing the materials available on record, we find that the CIT(A) has dismissed the appeals of the assessee exaparte as the assessee failed to appear before him. We also find that the CIT(A) has not considered the issue on merits. Before us, Id A.R. has requested to allow one more opportunity to present its case before the CIT(A). In view of above and in order to render substantial justice to the assessee, all materials facts are required to be brought on record to adjudicate the issue. For doing so, an opportunity has to be allowed to the assessee. We, therefore, set aside the orders of Id CIT(A) and restore the matter back to the file of the Id CIT(A) to re-adjudicate the appeals afresh after allowing reasonable and proper opportunity of hearing to both the parties.

6. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 30 /05/2018

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Ranchi; Dated 30 /05 /2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Md Sanaul Haque, Behind Madhuban Market, Main Road, Ranchi
2. The respondent: ACIT, Central Circle-2, Mahabir Tower, Main Road, Ranchi
3. The CIT(A),3, Patna
4. Pr. CIT, Patna
5. DR, ITAT, Ranchi
6. Guard file.
//True Copy//

BY ORDER,

SR.PS, ITAT,
CAMP AT RANCHI