



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

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.466/CTK/2017**

Assessment Year : 2008-2009

Sri Peer Kumar Singh, Plot No.1, Bhimkanda, Talcher, Angul.	Vs.	DCIT, Circle -1(1), Bhubaneswar.
PAN/GIR No.ALIPS 0067 J		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri S.N.Sahu, AR  
Revenue by : Shri Subhendu Dutta, DR

**Date of Hearing : 24/01/ 2019**  
**Date of Pronouncement : 25/01/ 2019**

**ORDER**

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax(Appeals)-1, Bhubaneswar dated 6.9.2017 for the assessment year 2008-09.

2. The grievance raised by the assessee in Ground Nos.1 & 2 is that the Commissioner of Income Tax(Appeals)-1, Bhubaneswar was not justified in dismissing the appeal of the assessee exparte without affording adequate opportunity of being heard to the assessee.

3. At the time of hearing, Id A.R. of the assessee submitted that the CIT(A) has dismissed the appeal of the assessee ex parte without hearing the assessee. He also submitted that earlier to this, the Assessing Officer also framed ex parte assessment order u/s.144 of the Act without providing due opportunity of hearing to the assessee, which was also against principle of natural justice. He also submitted that at the relevant point of time, he had gone to USA for his eye treatment and could not appear on behalf of the assessee, and hence, the orders of the Assessing Officer and CIT(A) are illegal being passed against principles of natural justice and for lack of adequate opportunity of hearing to the assessee . Ld A.R. of the assessee before me submitted that if one more opportunity is granted, then the case shall be properly represented before the Assessing Officer without any fail or adjournment.

4. Ld D.R. supported the orders of the lower authorities.

5. I have perused the relevant materials on record, inter alia, assessment order and first appellate order. From these two orders of the lower authorities, it is an admitted factual position that neither before the Assessing Officer nor before the CIT(A), the assessee was allowed opportunity of adequate hearing due to

the reason which cannot be apparently attributable exclusively to the assessee. The tax authorities are empowered to pass exparte orders if despite service of summons, the assessee does not comply with the same, But in the present case, I am not satisfied with the action of the tax authorities in passing exparte assessment order u/s.144 of the Act and dismissing the appeal exparte. From Para 2 of the appellate order, I observe that on 5.6.2017, Id A.R. of the assessee appeared and filed written submissions and the case was discussed partly and, thereafter the hearing was adjourned to 16.8.2017 and the CIT(A) granted a final opportunity of hearing on 28.8.2017. But I am unable to see any factual findings of the CIT(A) that despite knowledge of the last date of hearing for 28.8.2017, neither the assessee nor his authorised representative appeared nor any adjournment application was filed. In absence of such factual findings, I am satisfied that the assessee was not allowed due opportunity of hearing neither before the Assessing officer nor before the CIT(A) and orders have been passed against principle of natural justice. In view of above discussion, I am inclined to hold that the assessee should be allowed an opportunity of hearing at the level of the Assessing Officer. Therefore, the case is restored to the file of the Assessing Officer to the assessment stage for framing

denovo assessment order after allowing due opportunity of hearing to the assessee. The Assessing Officer is directed to conduct assessment proceedings without being prejudice from the earlier assessment and first appellate order and providing due opportunity of hearing to the assessee. The assessee is also directed to co-operate with the Assessing Officer and failing of which, he will face the consequences. Accordingly, Ground Nos.1 & 2 of the appeal are allowed for statistical purposes.

6. Since, I have restored the case to the Assessing Officer to the assessment stage, therefore, other grounds of appeal on merits have become infructuous and also not adjudicated upon.

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

Order pronounced on 25/01/2019.

Sd/-

**(Chandra Mohan Garg)**  
**JUDICIALMEMBER**

Cuttack; Dated 25/01/209  
B.K.Parida, SPS



**Copy of the Order forwarded to :**

1. The Appellant : Sri Peer Kumar Singh, Plot No.1, Bhimkanda, Talcher, Angul
2. The Respondent. DCIT, Circle -1(1), Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT- Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

**Sr.pvt.secretary,  
ITAT, Cuttack**