

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI.**

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**Early Hearing Application Nos.13, 14 & 15/Del/2019
(in ITA Nos.2232, 2233 & 2234/Del./2018)
(ASSESSMENT YEARS : 2013-14, 2013-14 & 2014-15)**

AND

**ITA No.2232/Del./2018
(ASSESSMENT YEAR : 2013-14)**

**ITA No.2233/Del./2018
(ASSESSMENT YEAR : 2013-14)**

**ITA No.2234/Del./2018
(ASSESSMENT YEAR : 2014-15)**

M/s. Azad Coach Pvt. Ltd., vs. ACIT, Circle 1,
2, Hill Lanes, Civil Lines, Noida.
New Delhi.

(PAN : AAECA3035A)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri Umesh Seth, Advocate
REVENUE BY : Shri S.L. Anuragi, Senior DR**

**Date of Hearing : 01.02.2019
Date of Order : 25.02.2019**

ORDER

PER BENCH :

Keeping in view the facts inter alia that the ld. CIT (A) has passed the impugned order ex parte due to non appearance of the

assessee without going into the merits of this case and that adequate opportunity of being heard is required to be provided to the assessee, the applications for early hearing are hereby allowed and Bench is proceeded to hear the appeals by today itself.

2. The appellant, M/s. Azad Coach Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeals, sought to set aside the impugned orders all dated 29.12.2017 passed by Ld. CIT (Appeals)-I, Noida qua the Assessment Years 2013-14, 2013-14 & 2014-15 on the grounds inter alia that :-

“ITA NO.2232/DEL/2017

1. That the impugned order of the Ld. Commissioner of Income Tax (Appeals) [hereinafter refer to Ld. CIT (A)] dated 29.12.2017 is bad in law and on facts.

2. That the order of the Ld. CIT (A) deserves to be set aside as the assessee was not allowed adequate opportunity of being heard.

3. That the order passed by the Ld. CIT (Appeals) under section 250 of the Income Tax Act,1961 is bad in law and not justified because Ld. CIT (A) has dismissed the appeal simply on account of non-prosecution of the appeal by the appellant without appreciating the judgement of Hon'ble Bombay High Court in case of CIT (Central) Nagpur vs. Premkumar Arjundas Luthra (HUF), [2016] 69 taxmann.com 407 (Bombay), where it has been held that law does not empower Ld. CIT (A) to dismiss the appeal for non-prosecution.

4. That the order passed by the Ld. CIT (A) u/s 250 of the Act is perverse to the provisions of the law and to the facts of the case, because of not following the provision of section 250(6) of the Income Tax Act, 1961 which states that order of the Commissioner (Appeals) disposing of the appeal shall be in

writing and shall state the points for determination, the decision thereon and the reason for the decision.

5. *That the Ld AO has erred in making addition of Rs.91,05,481 U/s 69C of the Income Tax Act, 1961.*

6. *That the ld. AO has erred in making addition of Rs.4,32,898 on account of unexplained expenditure on balances written off.”*

“ITA NO.2233/DEL/2018

1. *That the impugned order of the Ld. Commissioner of Income Tax (Appeals) [hereinafter refer to Ld. CIT (A)] dated 29.12.2017 is bad in law and on facts.*

2. *That the order of the Ld. CIT (A) deserves to be set aside as the assessee was not allowed adequate opportunity of being heard.*

3. *That the order passed by the Ld. CIT (Appeals) under section 250 of the Income Tax Act,1961 is bad in law and not justified because Ld. CIT (A) has dismissed the appeal simply on account of non-prosecution of the appeal by the appellant without appreciating the judgement of Hon'ble Bombay High Court in case of CIT (Central) Nagpur vs. Premkumar Arjundas Luthra (HUF), [2016] 69 taxmann.com 407 (Bombay), where it has been held that law does not empower Ld. CIT (A) to dismiss the appeal for non-prosecution.*

4. *That the order passed by the Ld. CIT (A) u/s 250 of the Act is perverse to the provisions of the law and to the facts of the case, because of not following the provision of section 250(6) of the Income Tax Act, 1961 which states that order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*

5. *That the Ld AO has erred in issuing the notice of penalty u/s 271(1)(c) at the correct address and has not given the opportunity of being heard as a principle of natural justice.*

6. *That the AO has erred in imposing the penalty U/s 271(1)(c).”*

“ITA NO.2234/DEL/2018

1. That the impugned order of the Ld. Commissioner of Income Tax (Appeals) [hereinafter refer to Ld. CIT (A)] dated 29.12.2017 is bad in law and on facts.

2. That the order of the Ld. CIT (A) deserves to be set aside as the assessee was not allowed adequate opportunity of being heard.

3. That the order passed by the Ld. CIT (Appeals) under section 250 of the Income Tax Act,1961 is bad in law and not justified because Ld. CIT (A) has dismissed the appeal simply on account of non-prosecution of the appeal by the appellant without appreciating the judgement of Hon'ble Bombay High Court in case of CIT (Central) Nagpur vs. Premkumar Arjundas Luthra (HUF), [2016] 69 taxmann.com 407 (Bombay), where it has been held that law does not empower Ld. CIT (A) to dismiss the appeal for non-prosecution.

4. That the order passed by the Ld. CIT (A) u/s 250 of the Act is perverse to the provisions of the law and to the facts of the case, because of not following the provision of section 250(6) of the Income Tax Act, 1961 which states that order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

5. That the Ld AO has erred in disallowance of Rs.8,64,371, the various expenses on account of personal use by the assessee company.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of the assessment order framed under section 143(3) of the Income-tax Act, 1961 (for short ‘the Act’) in Assessment Year 2013-14 (ITA No.2233/Del/2018), penalty proceedings under section 271(1)(c) were initiated. Declining the contentions raised by the assessee, AO proceeded to

levy the penalty to the tune of Rs.29,68,500/- for assessment year 2013-14 for furnishing inaccurate particulars of income under section 271(1)(c) of the Act. AO in AY 2013-14 (ITA No.2232/Del/2018) framed assessment u/s 143 (3) of the Act at the income/loss of Rs.55,04,594/- by way of making addition of Rs.91,05,481/- and Rs.4,32,898/- u/s 69 of the Act and addition of Rs.13,64,275/- on account of disallowance of expenses claimed by the assessee. Similarly, in AY 2014-15 (ITA No.2234/Del/2018), AO framed assessment u/s 143 (3) of the Act by making addition of Rs.894/- on account of interest in the nature of penalty incurred by the assessee on account of delay in deposit of TDS and made addition of Rs.8,64,371/- on account of making disallowance of expenses claimed by the assessee and thereby assessed the total income at Rs.6,92,827/-.

4. Assessee carried the matter before the Id. CIT (A) by way of appeals who has dismissed the appeals ex parte vide impugned orders. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Bare perusal of the impugned orders passed by the Id. CIT (A) goes to prove that notices for appearance of the assessee were issued on 05.07.2017, 28.08.2017 and 17.10.2017 in all the three appeals but it is nowhere recorded in the order that if the notices were served upon the assessee or the notices were received back unserved. It appears that the Id. CIT (A) has proceeded to decide the appeals without getting the notices served on the assessee which amounts to denial of adequate opportunity of being heard. So, we are of the considered view that in the interest of justice, assessee is entitled to be provided with adequate opportunity of being heard, hence impugned orders passed by the Id. CIT (A) are set aside and remanded back to the Id. CIT (A) to decide afresh after providing an opportunity of being heard to the assessee. Consequently, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in open court on this 25th day of February, 2019.

**Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 25th day of February, 2019
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-I, Noida.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.