



IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR

BEFORE SHRI A. D. JAIN, VICE PRESIDENT  
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.156/JAB/2018  
Assessment Year:2008-09

Sandeep Kumar Barman Shivaji Nagar, Gali No.18 Katni	v.	Income Tax Officer Ward Katni
TAN/PAN:APTPB7891N		
(Appellant)		(Respondent)

Appellant by:	Shri L. L. Sharma, Advocate		
Respondent by:	Shri P. D. Chougale, D.R.		
Date of hearing:	03	04	2019
Date of pronouncement:	03	04	2019

**ORDER**

PER A. D. JAIN, V.P.:

This is assessee's appeal against the order of the Id. CIT(A)-2, Jabalpur, dated 19/2/2016 for Assessment Year 2010-11, taking the following grounds:

- 1. Considering the fact that the Id CIT(A) has passed the appeal order without considering the grounds of appeal raised by the assessee and further Id CIT(A) has not decided grounds of appeal on merit hence in view of Hon'ble ITAT Jabalpur Bench Jabalpur decision in the case of M/s Shriji Ware House v ITO (ITA no 38/Jab/2015) the order of Id CIT(A) is bad in law and may kindly be cancelled.*
- 2. On the facts and in the circumstances of the case the Id CIT(A) was not justified in passing ex-party appeal order.  
Without prejudice to above*
- 3. On the facts and in the circumstances of the case the Id CIT(A) should have held that the Id ITO Ward 2, Katni*

*was not justified in initiating reassessment proceeding in the case of the assessee.*

*4. Under the facts and in the circumstances of the case the Id CIT(A), in view of Hon'ble ITAT Jabalpur Bench decision in the case of Raga Finvest Ltd. (ITA no 256 to 259/Jab/2013) should have held that the Id AO was not justified in treating cash of Rs.9,99,000/- received from customer and deposited in the Axis bank account of the appellant as unexplained and adding the same to the income of the appellant.*

2. By virtue of the impugned order, the Id. CIT(A) has dismissed the assessee's appeal for non-prosecution and also relying on the decision of the Hon'ble Supreme Court in the case of 'H.M Esufali H.M. abdulali', 90 ITR 271 wherein the Hon'ble Court has held that the appellate authority cannot substitute own judgment in place of the judgment of the A.O. unless it is shown that the judgment of the A.O. was biased, irrational, vindictive, or capricious. The Id. CIT(A) had issued notices, dated 22/11/2013, 17/12/2013 and 5/2/2016, but none appeared on behalf of the assessee before the Id. CIT(A) and the Id. CIT(A) dismissed the appeal of the assessee ex-parte qua the assessee. Such service of notice has, however, been disputed by the assessee.

3. Heard. we find that the CIT(A) has dismissed the appeal without providing proper opportunity to the assessee. Moreover, he has not decided the appeal after discussing in detail, his reasons for agreeing with the assessment order. As such, another opportunity of hearing requires to be given to the assessee to represent his case fully before the Id. CIT(A). Even otherwise, it is trite ['S. Velu Palandar Vs. DCIT' 83 ITR 683 (Mad.)] and incumbent on the Id CIT(A) to decide an appeal on merit even in the absence of any representation before them.

4. In view of the above, the matter is remitted to the file of the Id. CIT(A) to be decided afresh on merit, in accordance with law, on

affording due and adequate opportunity of hearing to the assessee. The assessee, no doubt, shall cooperate in the fresh proceedings before the Id. CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

5. In the result, for statistical purposes, the appeal is treated as allowed.

Order pronounced in the open Court on 03/04/2019.

Sd/-  
[T. S. KAPOOR]  
ACCOUNTANT MEMBER

Sd/-  
[A. D. JAIN]  
VICE PRESIDENT

DATED:03/04/2019  
JJ:0304

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR