

IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR

**BEFORE SHRI N.K.SAINI, VICE PRESIDENT AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

ITA No.96/JODH/2019
Assessment Year: 2012-13

Sh. Nana Lal Ahari,
113, J-Block, Sector-14
Hiran Magri, Udaipur(Raj)
[PAN :ABLPA7315H]

(Appellant)

Vs. Income Tax Officer,
Ward-5, Bhilwara

(Respondent)

Appellant by : None (W/S Sh. Sudhir
Mehta

Respondent by : Shri P.K. Singi, Ld. DR

Date of Hearing: 03/05/2019

Date of Pronouncement: 03/05/2019

ORDER

PER N.K.CHOUDHRY

The instant appeal has been preferred by the Assessee/Appellant against the order dated 26-12-2018 impugned herein passed by the Ld. CIT(A)-Ajmer, whereby the assessment order dated 24.02.2015 passed u/s 143(3)/153A of the I.T. Act, 1961 (hereinafter called as the 'Act') by the ACIT, Cental Circle-1, Udaipur, has been affirmed.

2. At the outset, it appears from the impugned order that Ld. CIT(A) had fixed the appellant proceedings on various dates , however, as per comments of the Ld CIT(A), the assessee was allowed several opportunities of being heard, there was no compliance . From the order, it does not reflects that the notices of the hearing have ever been served upon the assessee or not and even mode of service has

not been specified, therefore it cannot be presumed that proper notices have been served upon the assessee and in spite of receiving notices the assessee did not attend the proceedings nor filed any written submission, hence we have to consider as to whether the principles of natural justice have complied with in the instant case by giving proper and reasonable opportunity of being heard to the Assessee/Appellant.

3. It is trite to say that every person has the right to speak and be heard when allegations are being put towards him or her. If no opportunity has been given to the party effected, then it shall amount to violations of the principles of natural justice, which embedded in latin words "Audi Alteram Partem" which means 'hear the other side', or 'no man should be condemned un-heard' or 'both the sides must be heard before passing any order'. The principle of Audi Alteram Partem is the basic concept of the principle of natural justice and has not evolved from the constitution but evolved through civilization and mankind and is the concept of common law, which implies fairness, reasonableness, equality and equity. In India, the principles of natural justice are the grounds of Article 14 and 21 of the Constitution. Article 14 enshrines that every person should be treated equally. In the landmark case of 'Maneka Gandhi vs. The Union of India' (1978 AIR 597), it has been held by Constitution Bench of the Apex Court that the law and procedure must be of a fair, just and reasonable kind. The doctrine ensures a fair hearing and fair justice to both the parties. Under this doctrine, both the parties have the right to speak. The aim of this principle is to give an opportunity to the parties to defend themselves. Before the court, both the parties are equal and are entitlement of equal opportunity to represent them. If the order is passed by the authority without providing the reasonable opportunity of being heard to the

person affected by it adversely will be invalid and shall be liable to be set aside.

4. Coming to the instant case, the principles of natural justice have not been followed, as it is fundamental principle of law that no one can be remain un-heard, therefore in the peculiar facts of circumstances of the case, we are inclined to set aside the order passed by the Ld. CIT(A) and restore the matter back to the file of the Ld. CIT(A) for decision afresh, suffice to say while affording proper opportunities of being heard to the assessee.

We also direct the Assessee/Appellant to extend its full co-operation and participation in the appellate proceedings before the Ld. CIT(A) as and when required and in case of further default, the assessee shall not be subjected to any leniency.

5. In the result, the appeals filed by the Assessee/Appellant stands allowed for statistical purposes.

Order pronounced in the Open Court on 03.05.2019.

Sd/-
(N.K.SAINI)
VICE PRESIDENT

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated: 03/05/2019

PK/PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR