

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.532/JODH/2018
Assessment Year: 2008-09

Sh. Laxmi Lal Dangi Vs. Income Tax Officer
On behalf of Late Sh. Ganga Ward-2(1), Udaipur
Ram Dangi, Udaipur
(Rajsthan)

[PAN:BFPPD 9949L]

(Appellant)

(Respondent)

Appellant by : None
Respondent by : Shri P.K. Singi, Ld. DR

Date of Hearing: 02/05/2019
Date of Pronouncement: 02/05/2019

ORDER

PER N.K.CHOUDHRY

The instant appeal has been preferred by the Assessee/Appellant against the order dated 03.08.2018 impugned herein passed by the Ld. CIT(A)-1, Udaipur (Rajsthan) u/s 250(6) of the Income Tax Act, 1961 (hereinafter called as the 'Act') whereby the Ld. CIT(A) has dismissed the appeal of the appellant as not maintainable on the reason that the appellant has failed to show as to how, he is competent to file the appeal against the order in the name of Sh. Ganga Ram Dangi. It was further observed by the Ld. CIT(A) that no evidence of death of Sh. Ganga Ram is filed, no statement even that Sh. Laxmi Lal Dangi is legal heir of Sh. Ganga Ram Dangi has been filed.

2. The appellant being aggrieved has challenged the impugned order on the following sole ground.

"Under the facts and circumstances of the case and in Law, the Ld. A.O. has on the basis of assumptions and presumptions without appreciating the facts and merits of the case erred in levying penalty u/s 271(1)(b) of the Act. The same has been upheld by the Ld. CIT (Appeals)-1, Udaipur vide Order passed dated 03/08/2018 which is not correct."

3. From the impugned order it does not reflect that as to when and by which mode the notices of the hearing of the appellant proceedings have been issued and served upon the assessee. Even the Ld. CIT(A) has not decided the appeal on merits but simply dismissed as not maintainable.

4. 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 affected, 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 entitled to 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.

5. Coming to the instant case, the principles of natural justice have not been followed, as it is a fundamental principle of law that no one can remain unheard, therefore in the peculiar facts and 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.

6. In the result, the appeal filed by the Assessee/Appellant stands allowed for statistical purposes.

Order pronounced in the Open Court on 02.05.2019.

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

Dated:02/05/2019
PK/PS

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

Copy forwarded to:

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

ASSISTANT REGISTRAR