

**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. 46/Jodh/2018
(ASSESSMENT YEAR-2013-14)

Smt. Pushpa Ordia, 16/41, Near Session Court, Railway Station Road, Bhilwara	Vs	The ACIT, Circle-1, Ajmer
(Appellant)		(Respondent)
PAN: AAFPO3069A		

Revenue By	Sh. P.K. Singi, DR
Assessee By	None (Written submissions of Sh. M. Gargieya, Adv)
Date of hearing	30.04.2019
Date of Pronouncement	30.04.2019

ORDER

PER N. K. SAINI, V.P.

This is an appeal by the assessee against the order dated 01.11.2017 of Ld. Commissioner of Income Tax (Appeals), Ajmer.

2. Following grounds have been raised in this appeal:-

1. *The impugned additions and disallowances made in the order u/s 147/143(3) of the Act dated 17.01.2017 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.*
2. *The Id. CIT(A) erred in law as well as on the facts of the case in deciding the appeal ex parte without affording adequate and reasonable opportunity of being heard. The impugned order having been passed in gross breach of natural justice, kindly be quashed.*
3. **Rs.3,25,345/-:** *The Id. CIT(A) erred in law as well as on the facts of the case in confirming the disallowance of expenses of Rs.3,25,345/- claimed. The disallowance so made and confirmed by the Id. CIT(A), is totally contrary to the provisions of law and facts on the record and hence, the addition kindly be deleted in full.*
4. *The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234A, 234B & 234C of the Act. The appellant totally denies its liability of charging, the interest, so charged, being contrary to the provisions of law and facts, kindly be deleted in full.*
5. *The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.*

3. Vide ground No.2 the grievance of the assessee relates to the ex-parte order passed by the Id. CIT(A) without affording adequate and reasonable opportunity of being heard.

4. Facts of the case in brief that the assessee e-filed the return of income on 11.3.2015 declaring an income of Rs. 3,51,650/- which was processed u/s 143(1) of the Income Tax Act, 1961 [in short' the Act']

Later on, notice u/s 148 of the Act was issued on the basis of information received from the Department. The Assessing Officer framed the assessment at an income of Rs. 6,86,990/- by making the additions under the head 'income from other sources' on account of interest from the bank.

5. Being aggrieved, the assessee carried the matter to the Ld. CIT(A) who sustained the addition made by the Assessing Officer by observing as under:-

“2.0 During the course of appellate proceedings, the appeal was fixed for hearing on 05.09.2017, 26.09.2017, 09.10.2017 and 01.11.2017. No one has attended on any of the date of hearing and no written submission has been filed. Therefore, the appeal is decided after going through the assessment order and grounds of appeal as under.

3.0 The appellant has raised following grounds of appeal:

“7. Disallow the expenses of rupee 325345/- is bad in law and facts because assessee paid interest and other expense to the party during the year hence please delete the addition made by the ITO.”

3.1 This ground of appeal relates to disallowance of deduction of Rs. 3,25,345/- made by the AO of the expenses claimed by the appellant u/s 57. The appellant either during the course of assessment proceedings or appellate proceedings has not furnished any evidence to show that the expenses Rs. 3,25,341/- were incurred by her for earning the interest income of Rs. 6,95,772/-. Hence, the disallowance made by the AO of the expenses of Rs. 3,25,341/- claimed by the appellant u/s 57

against the interest income of Rs. 6,95,772/- is hereby confirmed.”

6. Now the assessee is in appeal.

7. The Ld. Departmental Representative relied on the observations made by the authorities below and strongly supported the impugned order passed by the Ld. CIT(A).

8. Nobody was present on behalf of the assessee, however, written submissions have been furnished stating therein as under:-

“1.1. It is submitted that no real and adequate opportunity of being heard was ever provided by the Id. CIT(A) in as much as the appellant never got any notice of hearing nor any communication as regards any of the dates of fixation for hearing as alleged by the Id. CIT(A).

1.2 In the impugned order the Id. CIT(A) has alleged that the appeal was fixed for hearing on 05.09.2017, 26.09.2017, 09.10.2017 and 01.11.2017. No one has attended on any of the date of hearing and no written submission has been filed. But such allegations are absolutely without giving any detail of the address where, the notice(s) were sent. Also there is no assertion (no details) if notices if any, sent through registered AD and the acknowledgement duly signed if available on record or that the envelope has not come back.

2.1 It appears that the notice/s of hearing have been sent at wrong / incomplete address. Hence it is difficult to believe that at such wrong / incomplete address notice could have been served. Otherwise there is no assertion in

the entire order that even a single notice of hearing could be served upon the assessee or it's A/R.

2.2 It is surprising to note that though the address of the appellant was available along with Mobile No. 94132-12866, which, belonged to the assessee. Moreover, in column no. 17 a new address of counsel of the assessee has been provided i.e. C/o Dalpat Singh Sethia, Advocate, Opp. Session Court, Bhilwara as was asked in the Form-35. Unfortunately, however no notice was ever received upon this address or at the address of the assessee, which was given in Form-35,

2.3. Thus, absolutely no notice (or intimation) at ail was received by the assessee or any one authorized by him on this behalf or even by the Id. AR or even by anybody else so as to inform the assessee of the fixation of any one or more date(s) of hearing.

3. It is further submitted that when there was no response on the first and/or four occasions, the Id. CIT (A) could have directed his office to ensure the service of the notice upon the address given in Form No. 35 only which was meant for this purpose only but there appears no such attempt made in his order.

4. Thus, no notice having been ever received by the assessee he could not have been blamed for non-appearance or not taking interest. The appellant having paid the appeal filing fee and also engaged a counsel, was fully interested in getting the matter disposed of. Otherwise also it is not the case where many opportunities were granted by the CIT (A).

These submissions have been made as instructed by the client.

Under these circumstances the Id. CIT(A) seriously erred in passing the impugned order in a great haste and ex-parte which was a clear violation of principle of natural justice as opportunity of being heard was clearly denied. Hence, to do substantial justice, the appeal kindly be decided in favour of assessee or alternatively restored to the file of the Ld. CIT(A).”

9. After considering the submissions of both the parties and material available on record, it is noticed that the Id. CIT(A) although stated that the case was fixed for hearing on various dates and last one was 1.11.2017 but nowhere it is stated that the notice of hearing was served upon the assessee. It is well settled that nobody should be condemned unheard as per the maxim “*audi alteram partem*”. We, therefore, by keeping in view the principles of natural justice, deem it appropriate to set aside this case back to the file of the Id. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 30.04.2019)

Sd/-
(N.K. CHOUDHRY)
Judicial Member

Sd/-
(N.K. SAINI)
Vice President

Dated :.30.04.2019

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, Jodhpur
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order

सहायकपंजीकार/ Assistant Registrar