

**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. 196/Jodh/2018
(ASSESSMENT YEAR-2008-09)

Anita Maheshwari, Prop. Vijayshree Transport, Nivedita Colony, Nimbaheara, Chittorgarh (Raj.)	Vs	The ITO, Ward-2, Chittorgarh
(Appellant)		(Respondent)
PAN: AHNPLM24441H		

Revenue By	Sh. P.K. Singi, DR
Assessee By	None (Written submissions of Sh P. Nyat. CA)
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 31.01.2018 of Ld. Commissioner of Income Tax (Appeals)-1, Udaipur.

2. During the course of hearing, nobody was present on behalf of the assessee. However, written submissiond has been furnished along with

the Affidavit of the assessee which has been considered while deciding this appeal.

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

1. That the Ld. CIT(A) has erred in law as well as in facts by holding that reopening of the case u/s 148 was correct and legal.

2. That the Ld. CIT(A) has erred in law as in facts by sustaining the addition of Rs. 1,79,097/- on account of cash payment exceeding Rs. 20000/- on single day.

3. That the appellant reserve the right to add, alter or in any way amended the grounds of appeal at or before the date hearing.

4. Facts of the case in brief are that the assessee filed the return of income on 30.09.2008 declaring an income of Rs. 4,49,390/- and agricultural income of Rs. 7,075/- which was processed u/s 143(1) of the Income Tax Act, 1961 [in short' the Act']. Later on, assessment was completed at an income of Rs. 5,05,040/- on 16.9.2010 u/s 143(3) of the Act. Thereafter, the Assessing Officer reopened the assessment by issuing notice u/s 148 of the Act. The assessee challenged the jurisdiction of the reopening, but the Assessing Officer did not find merit in the submissions for the assessee and made the addition of Rs. 17,29,097/- by making disallowance u/s 40A(3) of the Act. Being

aggrieved, the assessee carried the matter to the Ld. CIT(A) who passed the ex-parte order and sustained the addition made by the Assessing Officer. The Ld. CIT(A) mentioned in the impugned order that the last notice for hearing on 31.1.2018 was issued to the assessee on 18.1.2018, in response to which, neither anybody attended nor filed any application for adjournment.

5. Now the assessee is in appeal.

6. The Ld. Sr. Departmental Representative strong supported the orders of the authorities below and the assessee in her written submissions dt 29.4.2019 had stated as under:-

“The assessee had preferred the appeal before the Hon’ble ITAT against the ex-parte order passed by the commissioner of income Tax (Appeals) Udaipur. The assessee was not given enough opportunity of being heard. We request your good self to kindly set aside the case to the Assessing Officer, Chittorgarh.

Further the addition made on account of cash payments made to truck drivers are in actual the details of amounts paid to the transporters on which TDS was deducted and was not the actual cash payments. The figures were wrongly taken by the Assessing Officer. We request you to kindly give us one opportunity to furnish the details. The assessee had regularly attended the hearing previously before the assessing officer and also produced the regular books off accounts. We request you to kindly set aside the case to the assessing officer.

We are enclosing herewith the affidavit from the assessee stating the reasons for non appearance before the CIT (Appeals). Udaipur.”

In support of the above, the assessee furnished an affidavit stating therein as under:-

“AFFIDAVIT

I, Anita Maheshwari, wife of Shyam Sunder Maheshwari being Adult, residing at Kasod Gate Nimbahera Rajasthan , do hereby solemnly affirm and state as follows-

- 1. That I am the proprietor of M/s Vijay Shree Transport Co.*
- 2. That I being aggrieved with assessment order dated 20.03.2014 filed appeal before the Ld. CIT(A), Udaipur.*
- 3. That the said appeal was dismissed by the Ld. CIT(A) by passing an ex-parte order due to non appearance of anyone on the dates fixed for hearing before the Ld. CIT(A).*
- 4. That the said appeal was filed by our Tax consultant & advocate Shri Harsh Kumar Ji Jain from Chittorgarh. Shri Harsh Kumar ji jain is an aged person and was unable to travel to Udaipur so M/s Nyati & Associates was engaged in the instant matter to appear before the Ld. CIT(A) and I was under the bona fide belief that proper compliances were made from their end.*
- 5. That after receipt of the order of the Ld. CIT(A) on 09.03.2018 it came to my knowledge that they didn't attend the said case on the fixed dates.*
- 6. That on verification, it was found that Shri Prashant Nyati had attended the case on 21st July 2017 and had filed*

application for adjournment. After that he was not keeping well during the relevant period and thus, no compliances could be made by him. Later on his father also expired.

7. *That the figures considered Assessing officer in the order not pertain to the cash payments made to the transporters but in fact are the total payments on which TDS was deducted.*

8. *That I give an undertaking that proper compliance shall be made in case the above mentioned case is sent back to the file of the Ld. CIT(A).*

9. *That the facts stated in para 1 to 7 are true to the best of my knowledge and belief and paragraph 8 is an undertaking given by me.*

Place: Nimbahera
Dated 19th July 2018

Sd/-
(Anita Maheshwari)

Verification

I hereby state that waterver isstated herein above is ture to the best of my knowledge.

Place: Nimbahera
Dated 19th July 2018

Sd/-
(Anita Maheshwari)''

7. We have considered the submissions of Ld. Sr. Departmental Representative and written submissions furnished by the assessee. In the present case, it is an admitted fact that the Ld. CIT(A) passed the impugned order ex-parte. He simply stated that notice for hearing was issued to the assessee but nothing is brought on record to substantiate that the said notice 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.

8. 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