

IN THE INCOME TAX APPELLATE TRIBUNAL : JODHPUR BENCH : JODHPUR**BEFORE SHRI N.K. SAINI, HON'BLE VICE-PRESIDENT (SMC)**ITA No. 484/Jodh/2017)
(A.Y. 2009-10)Shri Subhash Chandra Mewara,
Mandakini Marg, Udai Palace,
Bijoliya,
Bhilwara 311602.
PAN NO. AGLPM4353M

vs

ITO, Ward-3,
Bhilwara

(Appellant)

(Respondent)

Date of hearing	:	06/05/2019
Date of pronouncement	:	06/05/2019
Assessee by	:	None.
Department by	:	Sh. P.K. Singi, JCIT-DR.

ORDER

This is an appeal by the assessee and is directed against the order dated 19.09.2017 of the CIT(A), Ajmer.

2. The only grievance of the assessee in this appeal relates to the sustenance of penalty of Rs. 1,03,000/- by the Id. CIT(A), levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter read Act..) by passing the ex parte order.

3. Facts of the case in brief are that the assessee filed the return of income on 30.03.2010 declaring the income of Rs. 1,97,050/- which was assessed at an income of Rs. 6,34,120/- u/s 143(3) of the Act.

4. The AO initiated the penalty proceedings on the addition of Rs. 4,35,070/- and levied the penalty of Rs. 1,03,000/- u/s 271(1)(c) of the Act.. Being aggrieved the assessee carried the matter to the Id CIT(A) who dismissed the appeal by passing ex pare order and sustained the penalty levied by the AO.

5. Now the assessee is in appeal. Nobody was present on behalf of the assessee and ld. Sr. DR supported the impugned order passed by the ld. CIT(A). After considering submissions the ld. Sr. DR and the material on record it is noticed that the ld. CIT(A) dismissed the appeal, ex parte by observing in para 3 of impugned order as under :-

“During the course of appellate proceedings, the appeal was fixed for hearing on 12.07.2017, 07.08.2017, 11.08.2017, 04.09.2017 and 19.09.2017. 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 penalty order and grounds of appeal as under”.

.....
.....
.....

6. From the above observations of the ld. CIT(A) it is noticed that he has simply stated that the appeal was fixed for hearing on various dates however nothing is on brought on record to substantiate that the notice for hearing was served upon the assessee.. It is well settled that nobody should be condemned unheard as per the maxim, “audi alteram partem”. I therefore, by keeping in view the principles of natural justice deem it appropriate to set aside this case back to the file of ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

7. In the result, appeal of the assessee is allowed for statistical purposes.
(Order pronounced in open court on 06/05/2019)

Sd/-
[N.K. SAINI]
VICE PRESIDENT

Dated : 06/05/2019.
A/N
Copy forwarded to :
1. Appellant.
2. Respondent
3. CIT
4. CIT(A)
5. DR

Assistant Registrar
ITAT, Jodhpur.