



**IN THE INCOME TAX APPELLATE TRIBUNAL,
PATNA BENCH, PATNA**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.247/Pat/2018
Assessment Year : 2011-2012

Jamadar Ansari, Village: Dumaria, PO: Kaurjhar, Via: Raxaul, Motihari	Vs.	ITO, Ward 1(3), Motihari
PAN/GIR No.ANOPA 9382 L		
(Appellant)	..	(Respondent)

Assessee by : Shri K.M. Mishra, AR
Revenue by : Shri Supriya Biswas, DR

Date of Hearing : 17/06/ 2019
Date of Pronouncement : 17/06/ 2019

ORDER

Per C.M.Garg, JM

This is an appeal filed by the assessee against the order of the CIT(A)-1, Jamshedpur dated 10.5.2018 for the assessment year 2011-12

2. In Ground Nos.1 to 6 of appeal, the grievance of the assessee is that the CIT(A) is not justified in upholding the assessment made u/s.144 of the Act and dismissing the appeal of the assessee without allowing reasonable opportunity to the assessee.

3. At the time of hearing, Learned A.R. of the assessee submitted that the CIT(A) has not afforded proper opportunity of hearing to the assessee. Ld A.R. of the assessee before us submitted that if one more opportunity is granted, then the case shall be properly represented before the CIT(A) without any fail or adjournment. Delay in filing appeal of 14 days is condoned in view of submissions of both the sides.

4. Ld D.R. supported the orders of the lower authorities.

5. We have perused the relevant materials on record, inter alia, assessment order made u./s.144 of the Act and first appellate order. From these two orders of the lower authorities, it is an admitted factual position that neither before the Assessing Officer nor before the CIT(A), the assessee was allowed opportunity of adequate hearing due to the reason which cannot be apparently attributable exclusively to the assessee. The tax authorities are empowered to pass exparte orders if despite service of summons, the assessee does not comply with the same, But in the present case, we are not satisfied with the action of the tax authorities in passing exparte assessment order u/s.144 of the Act and dismissing the appeal exparte. From Para 2 of the appellate order, we observe that on 10.8.2016, 19.12.2017,

19.3.2017 and 18.4.2018, notices were issued but the assessee could not comply with the same and the order was passed ex parte and there was no factual findings by the CIT(A). The order of the CIT(A) seems to be a stereo type one. Hence, we are satisfied that the assessee was not allowed due opportunity of hearing neither before the Assessing officer nor before the CIT(A) and orders have been passed against principle of natural justice. In view of above discussion,we are inclined to hold that the assessee should be allowed an opportunity of hearing at the level of the Assessing Officer. Therefore, the case is restored to the file of the Assessing Officer to the assessment stage for framing denovo assessment order after allowing due opportunity of hearing to the assessee. The Assessing Officer is directed to conduct assessment proceedings without being prejudice from the earlier assessment and first appellate order and providing due opportunity of hearing to the assessee. The assessee is also directed to co-operate with the Assessing Officer and failing of which, he will face the consequences. Accordingly, Ground Nos.1 to 6 of the appeal are allowed for statistical purposes.

6. Since, we have restored the case to the Assessing Officer to the assessment stage, therefore, other grounds of appeal on merits have become infructuous and also not adjudicated upon.

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

Order pronounced on 17/06/2019.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIALMEMBER

Patna; Dated 17 /06/209
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The appellant :Jamadar Ansari, Village:
Dumaria, PO: Kaurjhar, Via: Raxaul,
Motihari
2. The Respondent. ITO, Ward 1(3), Motihari
3. The CIT(A)-1, Jamshedpur
4. Pr.CIT- 1, Jamshedpur
5. DR, ITAT, Patna
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Patna