



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "SMC", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT**

ITA No.614/LKW/2019  
Assessment Year: 2016-17

M/s Asha Medesia 54, Hospital Chauraha Bahraich	v.	Income-tax Officer-1 Bahraich
TAN/PAN:AAQFA3876J		
(Appellant)		(Respondent)

Appellant by:	Shri P. K. Kapoor, C.A.		
Respondent by:	Shri Ajay Kumar, D.R.		
Date of hearing:	05	02	2020
Date of pronouncement:	06	02	2020

**ORDER**

This is assessee's appeal against the order of the ld. CIT(A)-1, Lucknow, dated 30/7/2019 for assessment year 2016-17, taking the following grounds:

1. BECAUSE "CIT(A)" was not justified in dismissing the appeal by passing ex-parte order without affording proper opportunity of hearing to the "appellant" and consequently the impugned order deserves to be set-aside and the matter restored to "CIT(A)" for passing the order afresh after affording due and effective opportunity of being heard to the "appellant".
2. BECAUSE various notices of hearing stated to have been issued by "CIT(A)" were not served upon the "appellant" as such no compliance of the same could be made-before the "CIT(A)" and consequently the ex-parte order passed by "CIT(A)" deserves to be set aside and relief claimed in the appeal before "CIT(A)" deserves to be granted to the "appellant".

3. BECAUSE notice under section 143(2) of the "Act" issued on the basis of selection through Computer Assisted Scrutiny Selection (CASS) methodology, not being based on the opinion expressed by the assessing officer himself, as per mandate of section 143(2)(ii) of the "Act", the entire assessment proceedings in pursuance of said notice got wholly vitiated and consequently Id. "CIT(A)" should have quashed the assessment order.

WITHOUT PREJUDICE TO THE AFORESAID

4. BECAUSE Id. "CIT(A)" has erred in law and on facts in confirming the addition of Rs.20,95,000/- made by the assessing officer by disallowing the amount of licence fee for retail trade of liquor paid by the "appellant" and debited in the profit & loss account.

5. BECAUSE the authorities below have grossly erred in holding that the appellant firm was not entitled to do the liquor business on the strength of licence issued to Smt. Asha Madesia, the partner of the firm, as no licence had been issued to the appellant firm.

6. BECAUSE looking to the fact that in the present case the licence was in the name of one of the partners and the licence fee was paid by the appellant firm itself, the claim of licence fee of Rs.20,95,000/- debited in the profit & loss account was duly allowable.

7. BECAUSE on the facts and circumstances of the case the decisions of the Apex Court relied upon by the assessing officer had no application in the present case as the cited cases are on their own set of facts which are clearly distinguishable from the facts of the present case.

8. BECAUSE otherwise also the licence fee of Rs.20,95,000/- was directly relatable to the gross business receipts credited in the profit & loss account, the said

licence fee constituted legitimate business expense incurred wholly and exclusively for the purpose of the business of the appellant firm and accordingly the licence fee paid by the appellant deserved to be allowed.

9. BECAUSE, without causing any prejudice to the aforesaid grounds, the entire business receipts and expenses including licence fee of Rs.20,95,000/- ought to have been considered and assessed in the hands of Smt. Asha Madesia, the partner of the appellant firm and the interest and remuneration paid to other partner as well as the benefit of related TCS credited to the account of the appellant firm should also have been allowed in her hand.

10. BECAUSE in any case, the assessment having been completed without issuing any show cause before making the impugned disallowance is against the principles of natural justice and fair play and consequently the orders passed by the authorities below are liable to be set aside.

11. BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice.

2. By virtue of the impugned order, the ld. CIT(A) has dismissed the assessee's appeal for non-prosecution, observing that the assessee is not interested in disposal of the appeal. The ld. CIT(A) has recorded certain dates of issuance of notice, in his order. But except on a particular date, on no other dates, the assessee appeared before the ld. CIT(A). But, it is not clear from his order whether notice of hearing was ever served upon the assessee. Such service of notices has, however, been disputed by the assessee.

3. Heard. I find that the CIT(A) has dismissed the appeal without providing proper opportunity to the assessee. Moreover, he has not decided the appeal after discussing in detail, his

reasons for agreeing with the assessment order. In this view of the matter, another opportunity of hearing requires to be given to the assessee to represent his case fully before the Id. CIT(A). Even otherwise, it is trite [‘S. Velu Palandar Vs. DCIT’ 83 ITR 683 (Mad.) and ‘Ms. Swati Pawa vs. Dy. CIT’, 175 ITD 622 (Del)] and incumbent on the Id CIT(A) to decide an appeal on merit even in the absence of any representation before them.

4. In view of the above, the matter is remitted to the file of the Id. CIT(A) to be decided afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the assessee. The assessee, no doubt, shall cooperate in the fresh proceedings before the Id. CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

5. In the result, for statistical purposes, the appeal is treated as allowed.

Order pronounced in the open Court on 06/02/2020.

Sd/-  
[A. D. JAIN]  
VICE PRESIDENT

DATED:06/02/2020

JJ:0502

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order  
Assistant Registrar