



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

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.318/ALLD/2017
Assessment Year: 2009-10

Manoj Kumar Gupta Bhagat Singh Colony Singrauli	v.	Income Tax Officer Mirzapur
TAN/PAN:ALDPG6259		
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri A. K. Singh, D.R.
Date of hearing:	14 02 2020
Date of pronouncement:	14 02 2020

ORDER

PER A. D. JAIN, V.P.:

This is assessee's appeal against the order of the ld. CIT(A)-2, Lucknow, dated 4/6/2019 for assessment year 2014-15, taking the following grounds:

1. BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in dismissing appeal ex-party without giving adequate opportunity of being heard.
2. BECAUSE on the date fixed appellant's counsel has appeared on 20.09.2017 and filed an application for short adjournment for a very much genuine reason that local counsel CA. Saurabh Tandon, who is looking after the appellant's case at local level could not come due to his busyness in his time bound professional assignment of tax audit.

3. BECAUSE the notice dated 10.03.2014 issued under section 148 of the Income tax Act, 1961 by the Income tax Officer, Ward-2, Rewa is without jurisdiction, therefore the consequential assessment order dated 28.03.2015 passed u/s 143(3) by the Income Tax Officer, Ward-III(3), Mirzapur is void ab initio and bad in law.

4. BECAUSE the learned Income tax officer has erred in law and on facts in holding that no any documentary evidence has been produced in support of his business, which may explain that the bank deposit in his saving bank account were made in tune of his business and making an addition of Rs. 2268550/-on account of cash deposit in his bank account.

5. BECAUSE during the course of assessment proceeding the appellant has filed the copy of return of his income filed originally along with copy of audited statement of account and audit report of his proprietary business M/s Shikha Enterprises which reflects the gross turnover of Rs. 5156523/-.

6. BECAUSE the deposit of Rs. 2268550/- in saving bank account is fully explained out of withdrawal from his proprietary business M/s Shika Enterprises.

7. BECAUSE in any the learned Income tax Officer has failed to appreciate the fact that cash was available to explain cash deposit in bank account out of cash withdrawal from the same bank account in which cash is deposited.

8. BECAUSE the appellant denies for levy of interest under section 234A, 234B and 234C of the Income Tax Act, 1961.

9. BECAUSE the order appealed against the contrary to the facts, law and principle of natural justice.

2. None has appeared on behalf of the assessee, despite issuance of notice through RPAD, which has not returned unserved. However, we find that this appeal can be proceeded with in the absence of the assessee. Therefore, we proceed to dispose of the appeal after having heard the ld. D.R. and having considered the material placed on record.

3. By virtue of the impugned order, the ld. CIT(A) has dismissed the assessee's appeal for non-prosecution, observing that no material has been produced by the appellant to show that the order of the Assessing Officer is incorrect. The ld. CIT(A) had issued two notices to the assessee. On the date fixed for hearing, i.e., 26/7/2017, the ld. Counsel for the assessee appeared and sought for adjournment. On the last date fixed for hearing, i.e., 20/9/2017 also, the ld. Counsel for the assessee appeared and sought for adjournment, but the ld. CIT(A), without adjourning the matter, decided the appeal qua the assessee.

4. Heard. We 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 ld. 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 ld CIT(A) to decide an appeal on merit even in the absence of any representation before them.

5. In view of the above, the matter is remitted to the file of the ld. 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 ld. CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

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

Order pronounced in the open Court on 14/02/2020.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

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

DATED:14/02/2020

JJ:1402

Copy forwarded to:

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

By order

Assistant Registrar