

IN THE INCOME TAX APPELLATE TRIBUNAL
GAUHATI 'E' COURT, AT KOLKATA

BEFORE SHRI A. T. VARKEY, JM & DR. A.L. SAINI, AM

आयकरअपीलसं./ITA No.401/Gau/2019

(निर्धारणवर्ष / Assessment Year:2016-17)

Smt. Mame Borang Water Resource Department, P.O. – Roing, Lower Digang Valley, Arunachal Pradesh – 792110.	Vs.	ITO, Wd – 2(1), Dibrugarh C.R. Building, Mancotta Road, Dibrugarh, Assam – 786003.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AIMPB 1357 R		
(Assessee)	..	(Revenue)

Assessee by : None

Respondent by : Shri M.K. Das, Addl. CIT

सुनवाईकीतारीख/ Date of Hearing : 18/06/2020

घोषणाकीतारीख/Date of Pronouncement : 17/07/2020

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the Assessee pertaining to assessment year 2016-17, is directed against the order passed by the Commissioner of Income Tax (Appeal) - Dibrugarh, in appeal No. CIT(A)/Dibrugarh/10061/208-19, dated 25.04.2019, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act) dated 18.12.2018.

2. Grounds of appeal raised by the Assessee as follows:

“1. For that the impugned order passed by the learned Commissioner of Income Tax (Appeals) (CIT(A) is bad in law, facts and procedure.

2. For that the impugned order having been passed by the ld. CIT(a) without allowing any reasonable opportunity of hearing and in gross violation of the principles of natural justice ignoring the adjournment petition filed by the appellant, the same is bad in law and is liable to be quashed.

3. For that the ld. CIT(A) ought to have deleted the arbitrary addition of Rs. 22,15,850/- made by the ld. AO in respect of opening cash in hand as the same was beyond jurisdiction.

4. For that the ld. CIT(A) was not justified in arbitrarily confirming the addition of Rs. 22,15,850/- made by the ld. AO in respect of opening cash in hand by invoking provisions of section 68 of the Act. For that the ld. CIT(A) ought to have hold that the impugned addition made during the year under consideration was without any authority of law and hence, the same is bad in law.

5. For that the ld. CIT(A) ought to have hold that the impugned addition of Rs. 22,15,850/- was made by the ld. AO in utter disregard to the principles of natural justice and ignoring the past assessment records and consequently the said addition was bad in law and untenable.”

3. At the outset itself, we note that assessee (by way of ground No. 3 and 5, as noted above) assailed the impugned order by contending that the assessee could not represent his case before Ld CIT(A) and assessing officer made addition in respect of opening cash in hand beyond his jurisdiction and ld CIT(A) also did not consider past assessment records while adjudicating the assessee's appeal. We note that during the appellate proceedings, the ld CIT(A) fixed hearings on 28.02.2019, 25.03.2019 and 24.02.2019 but none appeared on behalf of the assessee before the ld. CIT(A).

4. We have heard ld DR for the Revenue and note that there is nothing mentioned in the order of ld CIT(A) about service of notice of hearings to the assessee, that is, whether notice of hearing has actually been served on the assessee or not. We note that in the assessee's case under consideration, the assessment was carried out u/s 143(3) of the Act and the impugned order passed by the ld. CIT(A), is an ex parte order and non-speaking order, therefore, we do not wish to make any comments on the merits of the grounds raised by the assessee.

5. Considering the above facts, we note that assessee could not plead his case successfully before the ld. CIT(A). We note that the ld. CIT(A) did not consider past assessment records to discuss the assessee's case on merits, hence it is a violation of principle of natural justice. We are of the view that one more opportunity should be given to the assessee to plead his case before the ld CIT(A).

The Learned DR for the Revenue did not have any objection if the matter is remitted back to the file of the Id CIT(A).

Therefore, in the interest of justice, we deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the Id. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order pronounced in the Court on 17.07.2020

Sd/-
(A.T. VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक/ Date: 17/07/2020
(Biswajit, Sr.PS)

Copy of the order forwarded to:

1. Smt. Mame Borang.
2. ITO, Wd. – 2(1), Dibrugarh.
3. C.I.T(A)-
4. C.I.T.- Guwahati
5. CIT(DR), Gauhati Bench, Guwahati.
6. Guard File.

True copy

By Order

Senior Private Secretary / DDO / H. O. O
ITAT, Gauhati Bench