

*Satish Kumar Tripathi v. ITO***IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR****BEFORE S/SHRI NRS GANESAN, JUDICIAL MEMBER &
SANJAY ARORA, ACCOUNTANT MEMBER**

I.T.A. No. 217/JAB/2018
Assessment year: 2011-12

Shri Satish Kumar Tripathi, Mauganj Baratha More, Mangangrewa, Rewa (MP) (PAN : ABTPT 6483E)	vs.	Income Tax Officer, Ward-1, Rewa
(Appellant)		(Respondent)

Appellant by	Dr. H.S Modh, Adv.
Respondent by	Shri I.B. Khandel, DR
Date of hearing	16/7/2020
Date of pronouncement	16/7/2020

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-1, Jabalpur ('CIT(A)' for short) dated 23.8.2018, dismissing the assessee's appeal contesting his assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 14.6.2016 for assessment year (AY) 2011-12.

2.1 The appeal raises as many as six grounds, agitating several additions/disallowances. At the very outset, however, it was observed by the Bench that the order by the Id. CIT(A) is not on merits, but an *in limine* dismissal of the appeal for want of prosecution by the assessee-appellant.

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2.2 The Id. Counsel for the assessee, Dr. Modh, would, upon being asked by the Bench the reason/s for non-representation, explained, with reference to para 2 (pg.2) of the impugned order, that the assessee complied with the notice of hearing dated 25.6.2018 (for 06.7.2018), furnishing the relevant details and written submissions. The next date of hearing was kept at 21.8.2018, which though could not be attended as the assessee's counsel was occupied in tax audit work. The assessee dispatched the adjournment application (PB. pg.2) through courier (from Rewa) on 20.8.2018 (PB pg.1), which however was received by the Office of the Id. CIT(A) only on 24.8.2018 (PB. pg3). The Id. CIT(A) had, however, proceeded *ex parte* the assessee-appellant on 23.8.2018 itself, without even, as his order shows, considering the details/explanations already furnished and on record. The matter, therefore, in the interest of justice, be sent back to the file of Id.CIT(A). The Id. DR, Shri Khandel, would object, stating that this is the second round before the Tribunal, and the assessee is using dilatory tactics, seeking adjournment on one pretext or the other. This was also evident from the fact that in the month of August, the last date of completion of tax audit, i.e., 30.9.2018, was one-and-a-half months away. The assessee does not warrant any indulgence by the Tribunal.

3. We have heard the parties, and perused the material on record.

The appeal before the first appellate authority was filed on 05.7.2016, and fixed for hearing for the first time on 06.7.2018, i.e., after two years. Where, one wonders, then, was the urgency in proceeding *ex parte* the assessee-appellant on, even assuming so, non-compliance on one date. The assessee had in fact, by joining the proceedings on the first date hearing itself, furnishing the reply, exhibited his intent to prosecute his appeal. The submissions made by the Id. DR are without force. The assessment under challenge being pursuant to the Tribunal's order dated 28.5.2015 (in ITA No.179/Jab/2014), the instant proceedings cannot, in strict sense, be said to be the second round before the

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Tribunal. If the assessee was recalcitrant earlier, that was a matter to be canvassed during the earlier hearing and considered at that stage, which aspect is to be regarded as closed. Again, reference to the assessment order, also sought to be made by the ld. DR during hearing, is not relevant at this stage, as the same is to be considered by the first appellate authority while deciding the assessee's appeal on merits, which would also include the aspect of furnishing evidence for the first time before him, and *qua* which the law is well defined. That is, where the assessee does not appear or cooperate before the assessing or the appellate authority, which could well be the case, he does so at his own peril. The law (s.250(6)) contemplates an order on merits by the first appellate authority, while in the instant case the ld. CIT(A) has not even considered the assessee's explanation/ submissions forming part of the record.

We accordingly have no hesitation in, setting aside the impugned order, remitting the matter back to the file of the ld. CIT(A) for adjudication afresh in accordance with law. The assessee, even as assured by the Shri Modh, shall extend full cooperation in the set-aside proceedings. We decide accordingly.

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

Order pronounced in the open court on July 16, 2020

Sd/-
(N.R.S.Ganesan)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Dated: 16/07/2020
Aks (P)

Copy of the order forwarded to :

1. The Appellant: Shri Satish Kumar Tripathi, Mauganj Baratha More, Mangangrewa, Rewa
2. The Respondent : Income Tax Officer, Ward-1, Rewa
3. The concerned Pr. C.I.T.
4. The CIT (A) – 1 Jabalpur
5. Sr. DR, ITAT
6. Guard File