

**IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA 'D' BENCH,
KOLKATA**

**Before Shri S.S. Viswanethra Ravi, Judicial Member and
Shri Dr. A.L. Saini, Accountant Member**

I.T.A. No. 2055/KOL/2016
Assessment Year: 2011-12

M/s. Biharji Commercials Ltd.

PAN: AACCB2456N,
C/o G.P Agarwal & Associates,
7A, Kiron Shankar Ray Road,
2nd Floor, Kolkata-700 001.

Appellant

-Vs.-

I.T.O Ward 5(3), Kolkata

Respondent

Appearances by:
Shri Arvind Agarwal, Advocate, Ld.AR for the assessee
None appeared for the revenue

Date of hearing : 13-01-2017
Date of pronouncement : 20 -01-2017

ORDER

Shri. S.S.VISWANETHRA RAVI, JM:

This appeal by the Assessee is against the order dt: 03-08-2016 passed by the Commissioner of Income Tax-(Appeals), 2, Kolkata for the assessment year 2011-12.

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2. In spite of service of notice by the Tribunal, no one appeared for the revenue to prosecute the appeal. However, vide an application dated 12-01-2017 the revenue sought adjournment on the ground that the Id.Sr.DR has been appointed as Expenditure Observer in the General Elections to legislative assemblies of Goa, Manipur, Punjab, Uttar Pradesh and Uttarakhand 2017 by the Election Commission of India and he is attending the briefing/training at Delhi. Therefore, the concerned Id.Sr.DR is unable to attend/appear before the ITAT, Kolkata on the date of hearing on 13-01-2017.

3. The Id.AR appearing on behalf of assessee has objected to the above proposition of the revenue seeking for adjournment and urged before the bench to proceed the hearing as the first appellate authority did not afford any opportunity to assessee to prosecute its case by passing an ex parte order and prayed before us to remand the issues to the file of the CIT-A for further consideration/adjudication. In view of the above, the said adjournment application dated 12-01-2017 filed by the revenue is rejected and we proceeded to dispose of the appeal after hearing the Id.AR and perusing the material available on record on merits.

4. In this appeal the assessee has raised as many as 7 grounds of appeal, amongst which the only effective ground in this appeal is to be decided whether the CIT-A justified in passing an ex parte order without granting adequate opportunity of hearing to assessee.

5. The assessee being a company filed its original return of income declaring total income at Rs. Nil on 08-08-2011. Under scrutiny of said return notice u/s. 143(1) of the Act was issued. Thereafter, for re-opening the assessment notice u/s. 148 of the Act was issued and followed by a notice u/s. 142(1) of the Act. Thereby, the income of assessee was assessed at

Rs.25,04,500/- by an order dated 09-03-2015 passed u/s. 143(3)/147 of the Act by making disallowance of Rs.23,08,743/- under Rule 8d(2)(ii) r.w.s 14A of the Act.

6. In first appeal, before the CIT-A dismissed the appeal of assessee for non compliance of notice issued for hearing.

7. Before us the Id.AR submits that the CIT-A did not give adequate opportunity of hearing to the assessee to prosecute its case. The Ld. AR submits that on two occasions no one appeared before the CIT-A, but, however, on other two occasions, the assessee sought adjournments. He also submits that on the date of hearing on 29-07-2016 on behalf of assessee none appeared nor any adjournment was filed and Id.AR got authorization on that day itself with NOC and he could not attend before CIT-A, but, however, 29-07-2016 being Friday immediately on next working day i.e. on 1-8-2016 he approached the first appellate authority to find out the stage of the case. But, however, on such date it was informed that the case was already decided ex parte.

8. Heard the Id.AR and perused the material available on record. We find that on 4-5-2016 and 16-06-2016 the Id.AR representing the assessee was appeared and sought adjournments. But, however, on 11-05-2016 and 29-07-2016 no one appeared before the CIT-A representing the assessee. The Id.AR of the assessee submitted that the authorized representative got authorization on 29-07-2016 with NOC and he could not represent the case before the CIT-A due to unavoidable circumstances on the same day, but he approached the first appellate authority on the next immediate working day i.e. on 01-08-2016. But, however, on such day the appeal of assessee already decided ex parte. In view of the above, taking into consideration the submissions of

assessee and facts and circumstances of the case and on undertaking as offered by the Id.AR of the assessee before us, we deem it fit and proper to remand the issue to the file of the CIT-A for his fresh adjudication. Thus, this ground of assessee's appeal is allowed for statistical purpose.

9. In the result, the appeal of the Assessee is allowed for statistical purpose.

Order pronounced in the open Court on 20-01-2017.

Sd/-
Dr.A.L. Saini
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated 20-01-2017

Copies to :

**PP/SPS

(1) Appellant/Assessee: M/s. Bihariji Commercials Ltd C/o G.P Agarwal & Associates 7A Kiran Shankar Ray Road, 2nd Floor, Kolkata-700 001.

(2) Department/Respondent: The Income Tax Officer, W 5(3), Aaykar Bhawan, P-7 Chowringhee Square, Kolkata 700 069.

(3) Commissioner of Income-tax (Appeals)

(4) Commissioner of Income Tax, Kolkata

(5) The Departmental Representative

(6) Guard File By order

Assistant Registrar,
Income Tax Appellate Tribunal
Kolkata

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