

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. N. K. Saini, AM and Smt. Beena Pillai, JM

ITA No. 1990/Del/2014 : Asstt. Year : 2004-05

N. V. Marketing Pvt. Ltd., E-217, Greater Kailash, Part-I, New Delhi-110048	Vs	DCIT, Circle-13(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACN2680G		

Assessee by : Sh. Nitin Aggarwal, AR

Revenue by : Sh. Rajesh Kumar, Sr. DR

Date of Hearing : 26.04.2017	Date of Pronouncement : 26.04.2017
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 20.12.2012 of Id. CIT(A)-XVI, Delhi.

2. The only grievance of the assessee in this appeal relates to the confirmation of penalty of Rs.28,70,620/- levied by the AO u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the Act).

3. Facts of the case in brief are that the assessee filed the return of income on 01.11.2004 declaring an income of Rs.3,81,35,480/-. The AO however framed the assessment u/s 147/143(3) of the Act on 24.12.2009 at an income of

Rs.4,62,87,380/- after making addition in respect of unexplained expenses amounting to Rs.78,45,000/- and commission amounting to Rs.1,56,900/-. The AO also initiated the penalty proceedings u/s 271(1)(c) of the Act and levied the penalty of Rs.28,70,682/-.

4. Being aggrieved the assessee carried the matter to the ld. CIT(A) who dismissed the appeal of the assessee *ex-parte* for non-prosecution in *limine*.

5. Now the assessee is in appeal.

6. We have considered the submissions of both the parties and carefully gone through the material available on the record. It is noticed that the ld. CIT(A) in the body of the impugned order has mentioned in Column No. 9 relating to date of hearing as Nil. It, therefore, appears that no opportunity of being heard to the assessee was provide by the ld. CIT(A). It is also noticed that the ld. CIT(A) in para 3.1 of the impugned order has mentioned that the appeal was fixed for hearing on 18.12.2013 but on the said date nobody was present nor any submission was made. However, he has not mentioned that the date of hearing was intimated to the assessee or the notice of hearing was served upon the assessee.

It is well settled that nobody should be condemned unheard as per the *maxim "audi alteram partem"*. In the present case, the Id. CIT(A) had not afforded due and reasonable opportunity of being heard to the assessee. We, therefore, deem it appropriate to set aside the impugned order and remand the case back to the file of the Id. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 26/04/2017)

Sd/-
(Beena Pillai)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 26/04/2017

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR