

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

[Before Hon'ble Shri S.S.Viswanethra Ravi, JM & Dr.Arjun Lal Saini, AM]

ITA No.857/Kol/2016
Assessment Year : **2010-11**

Pratush Patodia
Kolkata

[PAN: AFKPP6757Q]
(Appellant)

-versus-

I.T.O., Ward-33(3),
Kolkata

(Respondent)

For the Appellant : Shri R.C.Jhawer, FCA

For the Respondent : Shri Rajat Kumar Kureel, JCIT

Date of Hearing : 26.09.2016

Date of Pronouncement : 28.09.2016.

ORDER

Per Dr.Arjun Lal Saini, AM

The captioned appeal filed by the assessee pertaining to A.Y.2010-11, is directed against the order passed by the Commissioner of Income Tax –(Appeals) -9, Kolkata, in Appeal No.254/CIT(A)-9/Wd-33(3)/2014-15/Kol, dated 29.02.2016, which in turn arises out of an order passed by the Ld. Assessing Officer u/s 143(3) of Income Tax Act, 1961 (in short, the Act) dated 28.03.2013.

2. The facts of the case are stated in brief. The return of income for A.Y.2010-11, was e-filed by the assessee on 13.10.2010 declaring a total income of Rs.10,02,187/-. The return was processed u/s 143(1) of the Act. Later on the case was selected for scrutiny u/s 143(3) of the Act and the AO has completed the assessment by making various additions. Aggrieved from the order of the Id. AO, the assessee filed an appeal before the Id. CIT(A), who has also confirmed the action of the AO by observing the followings :-

“In this case, notice U/s 250 was issued on 10/02/2015 by which date of hearing was fixed on 27/02/2015 however, neither anybody attended nor any written reply was received on the date of hearing. Therefore, fresh notices dated 25/05/2015,02/11/2015,28/12/2015,18/01/2016 & 19/02/2016 respectively were issued

but there was no compliance on the part of the appellant. Since there is no compliance during the appellant proceedings and there is no new fact/details available for consideration, I do not find any infirmity in the AO's order. Therefore, appeal is dismissed.”

3. Not being satisfied with the order of Id. CIT(A), the assessee is in further appeal before us.

4. Although in this appeal the assessee has taken multiple grounds of appeal but at the time of hearing the grievance of the assessee had been confined to only ground no.1 which relates to an ex-parte order made by the Id. CIT(A) without giving opportunity of hearing to the assessee. The Id. AR for the assessee has stated that notice u/s 250 of the Act was issued on the assessee on dated 10.02.2015 by which the date of hearing was fixed on 27.02.2015. The assessee filed an adjournment petition before the Id. CIT(A) on dated 24.02.2015, seeking an adjournment. The Id. CIT(A) did not consider the adjournment application of the assessee. However, the Id. CIT(A) issued fresh notices for hearings but none of them served on the assessee. The Id. AR for the assessee has explained that in respect of fresh notices on various dates, such as 25.05.2015, 07.11.2015, 28.11.2015, 18.01.2016 and 19.02.2016 etc, for that the assessee stated that he did not receive them. Had the assessee received these notices from the income tax department, he would have presented before the Id. CIT(A). Therefore order passed by the Id. CIT(A) is in violation of natural justice and without giving an opportunity to the assessee of being heard.

5. On the other hand, the Id. Departmental Representative for the revenue has primarily reiterated the stand taken by the AO and the Id. CIT(A), which we have already noted in our earlier para, and is not being repeated for the sake of brevity. The Id. DR also submitted that after taking the first adjournment the assessee had nearly one year time but the assessee did not approach the Id. CIT(A) within that period to follow up the matter from his side. Therefore Id CIT (A) considered it that the assessee was not interested to pursue the appeal, hence he was right in dismissing the appeal.

6. Having heard the rival submissions, perused the material available on record , we are of the view that there is merit in the submissions of the Id. AR for the assessee , as the propositions canvassed by the Id. AR for the assessee are supported by the facts narrated above. As the Id. AR for the assessee has explained that the assessee has filed an adjournment application and took an adjournment and after that the assessed did not receive any notice from the income tax department, in spite of this, the Id. CIT(A) has passed the order without giving an opportunity of being heard to the assessee. Therefore we are of the view that the assessee did not get sufficient opportunity of being heard. Hence, we are of the view to remit the issue back to the file of the Id. CIT(A) to decide the case afresh after giving adequate opportunity to the assessee of being heard. Therefore we set aside the order of the Id. CIT(A) and remit case back to the file of the Id. CIT(A) to decide the case afresh after giving adequate opportunity of being heard to the assessee, as discussed supra.

7. In the result, all the grounds of appeal of the assessee are allowed for statistical purposes.

Order pronounced in the court on 28.09.2016.

Sd/-
[S.S.Viswanethra Ravi]
Judicial Member

Sd/-
[Dr.Arjun Lal Saini]
Accountant Member

Date: 28.09.2016.
R.G.(P.S.)

Copy of the order forwarded to:

1. Pratush Patodia, R.C.Jhawer & Co., 7A, Bentick Street, Kolkata-700001.
- 2 I.T.O., Ward-33(3), Kolkata.
3. C.I.T.(A)- 9, Kolkata 4. C.I.T., 11, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy,

By order,

Deputy /Asst. Registrar, ITAT, Kolkata Benches

ITA No.857/Kol/2016
Pratish Patodia
A..Y.2010-11