

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT, AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No. 4101/Del /2010
Assessment Year: 2007-08

The I.T.O
Ward - 8(3)
New Delhi

Vs. Shree Bankey Bihari Textiles (P) Ltd
1074, Naya Katra, Chandi Chowk
Delhi - 110 006
PAN : AABCS 5942 H

ITA No. 3743/Del /2010
Assessment Year: 2007-08

Shree Bankey Bihari Textiles (P) Ltd
1074, Naya Katra, Chandi Chowk
Delhi
PAN : AABCS 5942 H

Vs. The I.T.O
Ward - 8(3)
New Delhi

[Appellant]

[Respondent]

Date of Hearing : 04.02.2016
Date of Pronouncement : 31.03.2016

Assessee by : None
Department by : Shri Anima Bernwal, Sr. DR

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

These cross appeals filed by the Revenue and assessee are directed against the order of the CIT(A)-XI, New Delhi dated 07/06/2010 for A.Y 2007-08.

2. The assessee has filed adjournment application but at the time of hearing when the appeal was called neither the assessee nor his representative appeared. The ld. DR contended that the appeal of the assessee should be discussed for non prosecution. On above noted situation, we are of the view that the assessee has filed application seeking adjournment. However, none appeared when the case came up before us for hearing but in this situation, the case cannot be dismissed on account of non prosecution. Hence, on perusal of record, we find that the appeal of the assessee may be disposed off after hearing the ld. DR on behalf of the respondent revenue. Therefore, we proceeded to adjudicate the appeal after hearing the ld. DR. Hence the application for adjournment filed by the assessee is dismissed.

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Ground Nos 1 and 2

3. We have heard the rival submissions and have perused the relevant material on record. The ld. DR supported the action of the AO and conclusion of the ld. CIT(A) and contended that the

authorities below property granted opportunity of being heard to the assessee thus there is no violation of principles of natural justice either during the assessment proceedings or during the first appellate proceedings before the ld. CIT(A). He further submitted that when the assessee is not cooperating with the proceedings then there is no option for the AO and ld. CIT(A) to proceed u/s 144 of the Act to decide the cases within the prescribed time limit. The ld. DR also pointed out that the ld. CIT(A) in paras 2 to 2.3 categorically dealt with the objection of the assessee and held that the law assists the vigilant and not those who sleep over their rights. The ld. DR vehemently argued that the ld. CIT(A) also provided due opportunity of hearing of the assessee.

4. On careful consideration of the above submissions and perusal of the relevant material on record, inter alia, assessment order and the impugned first appellate order, we note that at both the stages i.e during the assessment and first appellate proceedings, the orders have been passed exparte. From the table mentioned in para 1 of the assessment order it is apparent that the notices for next hearing has issued by fixing a date of 3 to 10 days expecting the compliance which is not a sufficient

time for compliance hence the ex parte order passed u/s 144 of the Act is violative of principles of natural justice which cannot be sustained and thus conclusion of the ld. CIT(A) is not justified and correct.

5. In view of the foregoing discussion we reach to the conclusion that there was violation of principles of natural justice by the AO hence the impugned assessment order as well as the order of the ld. CIT(A) is not legally sustainable and we demolish the same

6. Consequently, the entire assessment is restored to the file of the AO for a fresh de novo adjudication after providing due opportunity of hearing to the assessee and without being prejudiced from the earlier assessment order as well as the impugned first appellate order of the ld. CIT(A). Accordingly, Ground Nos. 1 and 2 of the assessee are allowed in the manner as indicated above.

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7. By the earlier part of this order, we have restored the entire assessment to the file of ht AO for afresh de novo

assessment holding that the assessee was not provided due opportunity of being heard as the impugned assessment has been framed u/s 144 of the Act exparte. Therefore, in the interest of justice, we also find it appropriate to restore the issue of unexplained unsecured loans is also restored to the file of the AO for fresh adjudication as per directions given hereinabove in this order.

8. Consequently, the sole ground of the Revenue is deemed to be allowed for statistical purposes.

9. In the result, the appeal of the assessee, as well as that of the Revenue, is deemed to be allowed for statistical purposes.

The order is pronounced in the open court on 31.03.2016.

**Sd/-
(G.D. AGARWAL)
VICE PRESIDENT**

**Sd/-
(C.M. GARG)
JUDICIAL MEMBER**

Dated: 31st March, 2016.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi