

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI
Before Sh. N. K. Saini, AM**

ITA No. 5445/Del/2014 : Asstt. Year : 2007-08

Simon Marandi At-Hirampur, Pakur, Jharkhand-816104	Vs	Commissioner of Income Tax-VI, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAQPM4135J		

Assessee by : None

Revenue by : Sh. Ved Prakash Mishra, Sr. DR

Date of Hearing : 23.09.2015	Date of Pronouncement : 24.09.2015
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ORDER

This is an appeal by the assessee against the order dated 05.08.2014 of Id. CIT(A)-VI, New Delhi.

2. The only grievance of the assessee in this appeal relates to the sustenance of penalty u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the Act) amounting to Rs. 1,30,000/- by passing the *ex-parte* order.

3. Facts of the case in brief are that the assessee filed the return of income on 13.09.2007 declaring an income of Rs. 86,226/-. The AO framed the assessment *ex-parte* u/s 144 of the Act by making an addition of Rs. 4,90,000/-. The AO initiated the penalty proceedings u/s

271(1)(c) of the Act and levied the penalty of Rs. 1,30,000/- by passing the *ex-parte* order.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who also passed the impugned order *ex-parte* and dismissed the appeal of the assessee on account of non-appearance in *limine*.

5. Now the assessee is in appeal. During the course of hearing nobody was present on behalf of the assessee neither any adjournment was sought. I, therefore, proceeded *ex-parte* qua the assessee and the appeal is decided after hearing the Id. DR. During the course of hearing the Id. DR submitted that the assessee is habitual in non-appearance and never appeared either before the AO or before the Id. CIT(A). Therefore, the AO rightly levied the penalty u/s 271(1)(c) of the Act on the concealed income and the Id. CIT(A) was fully justified in confirming the same.

6. I have considered the submissions of the Id. DR and perused the material available on the record. In the present case, it is noticed that the Id. CIT(A) mentioned in the impugned order that most of the time the assessee sought adjournment. Therefore, the assessee appears to be habitual in non-appearance on given dates of hearing. However, he has not mentioned the reasons for seeking the adjournment. He also did not discuss as to whether the reasons stated by the assessee for seeking the

adjournment were plausible or fabulous. It is also well settled that nobody should be condemned unheard as per maxim *audi alteram partem*. I, therefore, keeping in view the principles of natural justice set aside the impugned order and remand the case back to the file of the Id. CIT(A) to be adjudicated afresh after providing due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 24/09/2015)

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

Dated: 24/09/2015

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR