

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.458/Kol/2016
Assessment Year:2009-10

Sunita Jajodia Chhaparia & Associates, Chartered Accountants, 8, Camac Street, Shanatiniketan Building, 5 th Floor, Room No.2, Kol-700 017 [PAN No.ACPPJ 5904 P]	बनाम / V/s.	Income Tax Officer, Ward-36(2), Aayakar Bhawan, Poorva, 8 th Floor, 110, Shanti Pally Kolkata-107
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Shri Arindam Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	01-11-2017
घोषणा की तारीख/Date of Pronouncement	15-11-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-10, Kolkata dated 22.01.2016. Assessment was framed by ITO Ward-32(2), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 28.10.2011 for assessment year 2009-10. Penalty levied by ITO vide u/s 271(1)(c) dated 17.12.2013.

2. At the time of hearing, we find that neither anybody appeared on behalf of assessee nor any application for adjournment was filed. However, we noticed that the grievance of the assessee in its ground of appeal is that the Id. CIT(A) has passed the

ex-parte order without giving reasonable opportunity of being heard. Therefore, we decided to dispose of the appeal after considering the materials available on records and in the absence of the assessee.

3. At the outset, it was observed that the assessee before us in the grounds of appeal has pleaded that the impugned order has been passed without giving opportunity of being heard.

4. However, on perusal of appellate order, we find that Ld. CIT(A) affirmed the action of Assessing Officer after considering the written submission filed by the assessee vide dated 19.1.2016 and orders of the AO. Thus, it cannot be concluded the order of the ld. CIT(A) was *ex parte* and without mentioning any reason. But we also notice that the order was passed by the ld. CIT(A) without the personal appearance of the assessee or his authorized representative. We further note the case before ld. CIT(A) was fixed for hearing only just one time i.e. 19.01.2016 as evident from the order of ld. CIT(A). Therefore, we are of the view that in the interest of justice and fair play Ld. CIT(A) should have given another opportunity to the assessee to appear before him to explain his points of contentions. In this regard, Ld. DR also raised no objection if the matter is restored back to the file of Ld. CIT(A) for fresh adjudication. Therefore, in this view of the matter, we are inclined to remit the matter back to the file of Ld. CIT(A) with the direction to decide the issue raised by assessee afresh after giving reasonable opportunity of being heard to assessee. It is needless to say that the assessee should co-operate in the appellate proceeding. Hence, this ground of assessee's appeal stands allowed for statistical purpose.

5. **In the result, for statistical purpose, the appeal of assessee is treated as allowed.**

Order pronounced in open court on 15/11/2017

Sd/-
(न्यायिक सदस्य)
(S.S.Viswanethra Ravi)
Judicial Member

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
Accountant Member

*Dkp, Sr.P.S

दिनांक:- 15/11/2017

कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Sunita Jajodia, Chhaparia & Associates, Chartered Accountants
8, Camac St, Shantiniketan Buildings, 5th Fl, Room No.2, Kolkata-17
2. प्रत्यर्थी / Respondent-ITO Ward-36(2), Aayakar Bhawan, poorva, 8th Fl, 110,
Shanti Pally Kolkata-107
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता