

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA**  
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)  
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

**I.T.A. No. 1121/Kol/2015**  
**Assessment Year: 2010-11**

Income-tax Officer, Wd-44(2), Kolkata	Vs.	Epkam Associates (PAN: AABFE8374Q)
Appellant		Respondent

Date of Hearing	25.09.2017
Date of Pronouncement	29.11.2017
For the Appellant	Shri Arindam Bhattacharjee, Addl. CIT
For the Respondent	Shri A. K. Tibrewal, FCA

**ORDER**

**Per Shri A.T.Varkey, JM**

This is an appeal filed by the revenue against the order of Ld. CIT(A)-XII, Kolkata dated 28.10.2014 for AY 2010-11.

2. At the outset itself it was brought to our knowledge by the Ld. AR that there is a considerable delay in filing of appeal and the AO has filed Form No. 36 which is the Form for Appeal to the Appellate Tribunal under Rule 47(1), which is misleading and according to Ld. AR, misrepresentation has been deliberately made in the Form, so for this reason alone the appeal needs to be dismissed and the same has been committed by the AO. For that he drew our attention to Form No. 36 and to column no. 9 which states “*Date of communication of the order appealed against*” and we note that it has been stated to be **06.08.2015**. The Ld. AR drew our attention to the order passed u/s. 251 read with 143(3) of the Income-tax Act, 1961, which is the order giving effect to the order of the impugned Ld. CIT(A) which is dated 28.07.2015 wherein it has been clearly mentioned by the AO that the order of the Ld. CIT(A)-XII is dated 28.10.2014. We note that the effect of Ld. CIT(A)’s order has been given by the very same AO on 28.07.2015 i.e. after nine months the impugned order was passed and he has filed Form No. 36 stating that the Ld. CIT(A)’s

order was communicated to him on 06.08.2015 which is per-se misleading and erroneous on the face of the record. So, we note that there is considerable delay in filing of the appeal by the revenue and delay condonation petition has not been filed. From the facts narrated above, we note that the AO in order to cover his omission to file appeal in time has misrepresented in the Form 36 that he got the impugned order of Ld. CIT(A) on 06.08.2015, whereas the very same AO in the order giving effect to the order of Ld. CIT(A) has given the date as 28.10.2014 and the AO passed the order on 28.07.2015, and thereafter he filed the instant appeal. So, there was a clear delay of more than 9 months and the AO ought to have come clean on this and should not have misrepresented before the Tribunal. On this limited issue, we are not admitting the appeal of revenue and, therefore, we dismiss the same as un-admitted.

3. In the result, appeal of revenue is dismissed.

Order is pronounced in the open court on 29th November, 2017

Sd/-

(J. Sudhakar Reddy)  
Accountant Member

Sd/-

(Aby. T. Varkey)  
Judicial Member

Dated : 29th November, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ITO, Wd-44(2), Kolkata.
2. Respondent – Epkan Associates, 10/2A, Canal Circular Road, Kolkata-700067.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary