

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

[Before Sri M. Balaganesh, Hon'ble Accountant Member & Sri S.S. Viswanethra Ravi, Hon'ble Judicial Member]

I.T.A. No. 1944/Kol/2016
Assessment Year: 2010-11

DGP Steel Star Engineering (P) Ltd..... Appellant
G.T. Road, Bhiringi
Durgapur - 712213
PAN: [AABCD 0084 F]

Deputy Commissioner of Income Tax, Circle-6, Kolkata.....Respondent

Appearances by:

Shri Sumit Ghosh, Advocate, appeared on behalf of the assessee.

Shri Arindam Bhattacharya, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : January 11th, 2018

Date of pronouncing the order : February 7th, 2018

O R D E R

Per M. Balaganesh, AM :-

This appeal is preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata, (hereinafter referred to as the "Ld. CIT(A)"), dt. 22.07.2016, passed u/s 250 of the Income Tax Act, 1961(hereinafter the "Act") relating to assessment year 2010-11.

2. The preliminary issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in dismissing the appeal of the assessee on technical ground that the statement of facts and grounds of appeal were not filed by the assessee before the Ld. CIT(A), in the fact and circumstances of the case.

3. The brief facts of this issue is that the assessment was completed u/s 143(3) of the Act, determining the total income at Rs.57,10,818/-. After making certain additions of Rs.8,95,334/-, u/s 40(a)(ia) of the Act. The assessee preferred an appeal before the Ld. CIT(A) against this disallowance. The assessee had indeed

filed copy of Form No. 35 and the grounds of appeal before the Id. CIT(A), together with other documents on 07/05/2013, for the necessary acknowledgement was issued by the Office of the Commissioner of Income Tax (Appeals)-VI, which is placed on record. The Id. CIT(A), observed in his order as under:-

“The assessee being aggrieved by the above order filed an appeal on 07.05.2013. The case was fixed for hearing on 19.07.201 and the AR of the assessee appeared for hearing. During the proceedings brought to the notice of the AR that this appeal does not have statement of facts or ground of appeal. the assessee at the time of filing the appeal filed a page having heading ground of appeal but it is sort of statement of facts and there in not proper ground of appeal in the file.”

4. We have heard the rival submissions. The Id. A/R placed on record the copy of the letter dt. 21/03/2010, filed by the Id. CIT(A), through RPAD on 23/02/2016 (Acknowledgment enclosed), wherein it was specifically pointed out that the assessee had indeed appeared before his predecessor on 21/01/2016 and subsequently on 29/01/2016 and written submissions were also filed thereon. This letter also states that since the lawyer of the assessee was busy with his professional duties, an adjournment was sought for to any date after 15th April, 2016. It was also pointed out by the Id. A/R that the Id. CIT(A) never intimated the assessee on 20/01/2016 and 29/01/2016, with regard to the non-filing of the grounds of appeal before him. Accordingly, it was argued that the action of the Id. CIT(A) in dismissing this appeal on this mere technical ground, which is also factually incorrect, was not warranted.

4.1. We appreciate the contentions raised by the Id. A/R, in this regard and in the facts and circumstances of the case, we deem it fit and appropriate in the interest of justice and fairplay to set aside this appeal to the file of the Id. CIT(A), for *de novo*, adjudication to decide the issue raised before him on merits and pass an order in accordance with law. Needless to mention that the assessee be given reasonable opportunity of being heard. The assessee is directed to appear before

the ld. CIT(A) on 11th March, 2018 and not take any adjournment unless prevented by *bona fide* or exceptional circumstances. The ld. CIT(A) also is hereby directed to dispose off this appeal on or before 30/06/2018. Accordingly, the grounds raised are allowed for statistical purposes.

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

Kolkata, the 7th day of February, 2018.

Sd/-

[S.S. Viswanethra Ravi]
Judicial Member

Sd/-

[M. Balaganesh]
Accountant Member

Dated : 07.02.2018
{SC SPS}

Copy of the order forwarded to:

1. DGP Steel Star Engineering (P) Ltd
G.T. Road, Bhiringi
Durgapur - 712213

2. Deputy Commissioner of Income Tax, Circle-6, Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches