

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

Before **Shri Aby.T Varkey, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.1518/Kol/2016
Assessment Year:2009-10

M/s Gour Construction 14/1, Dr. P.T. Laha Street, P.O. Rishra, Dist. Hooghly West Bengal-712248 [PAN No. AAHFG 0357 P]	V/s.	Income Tax Officer-TDS, Hooghly, Asyakar Bhawan, Khadinamore, Chinshura, Hooghly, Pin 712101
PAN No.		
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Shr Aariindama Bhattaaherjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	04-02-2018
घोषणा की तारीख/Date of Pronouncement	21-02-2018

आदेश /ORDER

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-21, Kolkata dated 21.04.2016. Assessment was framed by ITO, TDS Hooghly u/s 221 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 20.12.2012 for assessment year 2009-10.

2. At the time of hearing, we find that neither anybody appeared on behalf of assessee nor any application for adjournment was filed from assessee. However, we noticed that the Id. CIT(A) has passed the *ex-parte* order. Therefore, we decided to dispose of the appeal after considering the materials

available on records and without the appearance of the assessee after hearing Ld. DR for the Revenue.

3. At the outset, it was observed from the order of Ld. CIT(A) that the case was fixed for hearing on various occasions but the assessee most of the time was absent. Therefore, the appeal was decided by Ld. CIT(A) as *ex parte* on 21.04.2016. Against the impugned *ex parte* order of Ld. CIT(A) assessee filed an appeal before us and submitted in grounds of appeal that the impugned order has been passed without giving opportunity to the assessee.

4. On perusal of appellate order, we find that Ld. CIT(A) affirmed the action of Assessing Officer *ex parte* without mentioning any reason for confirming the same on merits. The provisions of Section 250(6) of the Act require the Commissioner (Appeal) to dispose of the appeal in writing with reasoning. Thus, in such circumstances we find that the Ld. CIT(A) has not allowed proper opportunity of being heard. The principle of *audi alteram partem* is the basic concept of natural justice. The expression "*audi alteram partem*" implies that a person must be given an opportunity to defend himself. This principle is *sine qua non* of every civilized society. The right to notice, right to present case and evidence, right to rebut adverse evidence, right to cross examination, right to legal representation, disclosure of evidence to party, report of enquiry to be shown to the other party and reasoned decisions or speaking orders. We took this guidance for right of hearing, from the ratio as is laid down by the Hon'ble Supreme Court in the case of *Maneka Gandhi v. Union of India*, wherein Hon'ble Supreme Court has laid down that rule of fair hearing is necessary before passing any order. We find that it is pre-decision hearing standard of norm of rule of *audi alteram partem*. We find that in this instant case, the assessee was not given proper hearing. Therefore, we are of the view that the assessee must be given one more opportunity of hearing and to represent his case. Therefore, in exercise of power conferred under Rule 28 of Tribunal Rules, we restore this appeal to the file of Ld. CIT(A) for reconsideration all grounds of appeal after allowing proper

opportunity of being heard in accordance with law. Nevertheless, to mention that the assessee will cooperate in the appeal proceedings and its failure will entail confirmation of the impugned addition made by the AO. The assessee will file necessary evidences on which he wants to rely upon.

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 the open court 21/02/2018

Sd/-
(Aby. T. Varkey)
(Judicial Member)
Kolkata,

Sd/-
(Waseem Ahmed)
(Accountant Member)

*Dkp

दिनांक:- 21/02/2018 कोलकाता ।

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

1. अपीलार्थी/Appellant-M/s Gour Construction, 14/1, Dr. P.T. Laha Street, P.O. Rishra
Dist. Hooghly, West Bengal,-712248
2. प्रत्यर्थी/Respondent-ITO, TDS, Hooghly, Aayakar Bhawan, Khadinamore, Chinshrah
Hooghly, Pin 712101
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
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 ।