

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

Before **Shri N.V.Vasudevan, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

**ITA No.110/Kol/2017**  
Assessment Year :2012-13

Vivek Barter Pvt Ltd. 32, Ezra Street, 4 <sup>th</sup> Floor, Room No.403, Kolkata-001 <b>[PAN No.AAACV 8952 B]</b>	<b>V/s.</b>	Income Tax Officer, Ward-5(4), 8 <sup>th</sup> Floor, Aaykar Bhavan, P-7, Chowringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Sunil Surana, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri Arindam Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	27-02-2018
घोषणा की तारीख/Date of Pronouncement	28-02-2018

**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)-2, Kolkata dated 06.12.2016. Assessment was framed by ITO Ward-5(4), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 20.03.2015 for assessment year 2012-13. The grounds as raised by the assessee reads as under:-

- “1. For that the L. CIT(A) erred in deciding the appeal x parte without allowing the appellant any proper and reasonable opportunity of being heard and in fact the last notice issued for hearing on 1.12.2016 was never served on the appellant.*
- 2. For that the order passed by the Ld. CIT(A) is bad in law since the Ld. CIT(A) has not decided the issues ground-wise in respect of the grounds raised by the appellant in the Memo of Appeal.*
- 3. For that the Ld. CIT(A) is bad in law since the order passed is not any speaking order nor the CIT(A) has looked into the assessment records and relevant materials to conclude that the order of the Ld. AO cannot be interfered with.*

4. For that on the facts and in the circumstances of the case the order passed by the Ld. CIT(A) is not maintainable.
5. For that the order of the AO be modified and the assessee be given relief prayed for.
6. For that the assessee craves leave to add, alter or amend any ground before or at the time of hearing.”

Shri Sunil Surana, Ld. Authorized Representative appeared on behalf of assessee and Shri Arindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue.

2. At the outset, it was observed that the Id. CIT-A has passed the *ex parte* order confirming the order of the Assessing Officer without deciding the issue on merit. The Id. CIT(A) confirmed the order of the AO *ex parte* due to fact that the assessee failed to advance any arguments on merits and failed to attend the dates of hearings fixed by the Id. CIT(A) during the proceedings. Therefore the *ex parte* order was passed by the Id. CIT(A) vide order dated 06.12.2016.

3. It was further submitted in the grounds of appeal that the impugned order was disposed of by the Id. CIT(A) without giving reasonable opportunity to the assessee. The Id. AR also submitted that the last notice issued fixing the hearing date on 01.12.2016 was not served upon the assessee. As such, it was pleaded before us by the Id. AR to provide one more opportunity and accordingly the matter should be set aside to the file of Id. CIT(A).

4. Per contra, it is the argument of Ld. DR for the Revenue that opportunities were given to assessee but he did not avail the same. Therefore the Ld. CIT(A) had no option but to dispose of the matter *ex parte*.

5. Be that as it may, it is clear from the record and looking at the absence of the assessee, Ld. CIT(A) concluded that the assessee has no interest to pursue the matter and to get it dispose of on merits. On perusal of the matter, it occurs to our mind that Ld. CIT(A) is motivated to dispose of the matter *ex parte* only because of his observation that the assessee failed to appear on the dates of hearings. In our considered opinion, it cannot be a ground to deny justice without giving reasonable opportunity to the party affected. It is because in the instant case the assessee also filed adjournment petitions before the Ld. CIT(A). The provisions of Section 250(6) of the Act require the

Commissioner (Appeal) to dispose of the appeal in writing with reasoning. But we find from the impugned order of Ld. CIT(A) who confirmed the order of AO without deciding the same on merit. We also find 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 its points of contentions. Thus, we are of the opinion that Ld. CIT(A) should have given sufficient time for assessee to present its case fully and effectively, therefore to meet end of justice we set aside the matter to the file of Ld. CIT(A) for disposal afresh and according to law after giving reasonable opportunity of being heard to assessee. Therefore we direct the assessee to co-operate including the appearance and production of books of account as and when the matter is taken up by Ld. CIT(A). We order accordingly.

**6. In the result, for statistical purpose, appeal of assessee stands allowed.**

Order pronounced in the open court 28/02/2018

Sd/-  
(न्यायिक सदस्य)  
(N.V.Vasudevan)  
(Judicial Member)  
Kolkata,  
\*Dkp, Sr.P.S

दिनांक:- 28/02/2018 कोलकाता ।

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

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

1. अपीलार्थी/Appellant-Vivek Barter Pvt. Ltd.32, Ezra Street, 4<sup>th</sup> Fl, Room No.403, Kol-001
2. प्रत्यर्थी/ Respondent-ITO ward-5(4), 8<sup>th</sup> Fl, Aaykar Bhavan, P-7, Chowringhee Sq. Kol-69
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 ।