

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.122/Kol/2017
Assessment Year :2012-13

M/s Sao Finance & Properties (P) Ltd., 310, Kamalalaya Centre, 156A Lenin Sarani, Kolkata-13 [PAN No.AAGCS 9361 M]	V/s.	DCIT, Circle-2(2), Aaykar Bhawan, P-7, Chowringhee Square, 7 th Floor, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Vineet Singh, Staff
प्रत्यर्थी की ओर से/By Respondent	Shri Arindama 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)-1, Kolkata dated 05.12.2016. Assessment was framed by DCIT, Circle-2(2), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 21.03.2015 for assessment year 2012-13. The grounds as raised by the assessee reads as under:-

- “1. For that the Ld. CIT(Appeals) erred in passing order by not giving sufficient opportunity to appear and advocate the case.*
- 2. For the Ld. CIT(Appeals)order should be remanded again for hearings your assessee plea on the basis of natural justice.*
- 3. For that the Ld. CIT(Appeals) erred in keeping the addition of unsecured loan of R.1,54,00,000/- and interest of Rs.1,14,554/- on unsecured loan to the total income of the assessee added back by the Ld. AO on arbitrary basis.*
- 4. For that the Ld. CIT(Appeals) erred in keeping the addition of Rs.31,83,743/- u/s. 14A read with Rule 8D of the Income Tax Act, 1961.*

5. That the appellant craves leave to add, later or delete all or any of the grounds of appeal.”

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

2. The assessee filed an adjournment petition dated 26-02-2018 on the premise of preparation & filing of paper book. However, 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 appellate proceedings. Therefore, the impugned *ex parte* order was passed by the Id. CIT(A) vide order dated 05.12.2016. In view of above, we rejected the adjournment petition filed by the assessee and decided to proceed to hear the case on the basis of materials available on record.

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 of being heard to assessee and as such, it was pleaded before us in the grounds of appeal to provide one more opportunity and accordingly the matter should be set aside to the 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. Needless to say 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 ।

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

1. अपीलार्थी/Appellant-M/s Sao Finance & Properties (P) Ltd., 310, Kamalalaya Centre, 156A, Lenin Sarani, Kol-13
2. प्रत्यर्थी/Respondent-DCIT, Circle-2(2), Aaykar Bhawan, P-7, Chowrighee Sq. Kolkata-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.

By order/आदेश से,

/True Copy/

Sr. Private Secretary, Head of Office/DDO

आयकर अपीलीय अधिकरण,

कोलकाता ।