

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA Nos.191/Kol/2017

(निर्धारणवर्ष / Assessment Year: 2009-10)

Shirish Gunvantrai Desai (HUF)	Vs.	ITO, Wd-15(3), Kolkata
Flat No.401, 4 th Floor, Raheja Residency CHSL, Plot No.106, Road No.29 Sion East, Mumbai – 400 022.		Aayakar Bhawan, Poorva, 110, Shantipally, Kolkata – 700017.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AABHD 6112 P		
(Appellant)	..	(Respondent)

Appellant by : Shri V. N. Datta

Respondent by : Shri A. Bhattacharjee, Addl. CIT(DR)

सुनवाईकीतारीख/ **Date of Hearing** : **19/04/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **26/04/2018**

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2009-10, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-10, Kolkata in appeal No.72/CIT(A)-10/C-36/16-17/Kol, dated 23.11.2016, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3)/147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), dated 28.03.2016.

2. At the outset itself, the Id. counsel for the assessee submitted before us that the impugned order passed by the Id. CIT(A) is an *ex parte* order

and therefore, the assessee could not plead his case before the Id. CIT(A). The Counsel pointed out that the Id CIT(A), during the appellate proceedings, has not given adequate opportunity of being heard. The assessee in his grounds of appeal, has especially raised Ground No.3 stating as follows:

“That the Id. CIT(A) ought to have allowed another opportunity of being heard as he too issued only one notice and due to the reason of the Appellant karta being bed ridden due to illness since almost April 2016 and thus was highly incapacitated in attending to his official affairs, the said notice went unattended.”

3. The Id. counsel for the assessee has submitted that the karta of the HUF, has been feeling severe illness since a long, therefore he could not attend the hearing before the Id. CIT(A), hence he prayed that the matter may be remitted back to the file of the Id. CIT(A) for fresh adjudication. The Id. DR for the Revenue did not have any objection if the matter is remitted back to the file of Ld. CIT(A), however, he wanted the assessee to participate in appellate proceedings.

4. We note that assessment was carried out u/s 147/143(3) of the Act and the impugned order is an ex parte order, therefore, we do not wish to make any comments on the merits of the grounds raised by the assessee. Since, the impugned order is an ex parte order, the assessee could not plead his case before the Id. CIT(A), therefore considering the principle of natural justice, we are inclined to set aside the impugned with a direction to the assessee to be present before the Id. CIT(A) on 3rd July, 2018. The Id. CIT(A) is directed to pass a speaking order after hearing the assessee and after giving adequate opportunity to the assessee. No separate notice will be given to the assessee for appearance before the Id. CIT(A) on 3rd July, 2018. This is to ensure that the assessee should participate in the

appellate proceedings diligently. Therefore, we allow this appeal for statistical purposes.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 26/04/2018.

Sd/-
(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 26/04/2018

(RS, SPS)

Sd/-
(A. L. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- Shirish Gunvantrai Desai (HUF)
2. प्रत्यर्थी/ The Respondent- ITO, Wd-15(3), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.