

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

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.369-370/Kol/2017
Assessment Years :2009-10 & 2010-11

Sri Shib Narayan Basu 28/A East Santrapara, Rahara, 24 Parganas (North), Pin-700118 [PAN No.AAJPB 1957 A]	V/s.	DCIT, Circle-51, Aayakar Bhawan Uttar, manicktala Civic Centre, Uttarapan Complex, DS- 3, Kolkata-54
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri Rip Das, FCA
राजस्व की ओर से/By Revenue	Shri S. Dasgupta, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	31-05-2018
घोषणा की तारीख/Date of Pronouncement	31-05-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

These two assessee's appeals for assessment years 2009-10 and 2010-11 arise against Commissioner of Income Tax (Appeals)-15, Kolkata's separate orders; both dated 21.12.2016, passed in case No.43 & 44/CIT(A)-15/15-16/DCIT Cir-51/Kol; respectively, in proceedings u/s 143(3) r.w. 147 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case files perused.

2. We notice at the outset that the CIT(A)'s twin orders in both the impugned assessment year(s) dismiss the assessee's appeals passed *ex parte*. He has affirmed the Assessing Officer's action addition expenditure of

₹22,99,557/- on account of non-deduction of TDS *qua* payment made to foreign shipping lines, non deposit of TDS deducted to the tune of ₹20,833/- leading to addition of ₹2,08,300/-, non depositing Central Excise, ESI and PF contributions totaling to ₹32,373 both on time and subscriptions / donations expenditure to ₹15,050/- declined u/s 37 of the Act; in former and similar disallowance(s) / addition(s) of ₹21,11,740/-; paid to foreign shipping lines, ₹4,49,720/- in respect of tailor hire charges disallowed u/s. 40(a)(ia) of the Act, non depositing TDS deducted of ₹49,951/- leading to disallowance / addition of ₹49,95,100/-, Central Excise and ESI / PF dues of ₹28,821/- and subscription / donation expenditure of ₹15,300; respectively in the latter assessment year.

3. Both Learned Representatives are fair enough in pointing out the fact that CIT(A) had accepted assessee's adjournment letters before passing the impugned lower appellate order(s) *ex parte* dismissing his two appeals. Learned Authorized Representative submits that there was a communication gap as the relevant adjournment letter on the last date of hearing could not be placed before the lower appellate authorities. He highlights the fact thereafter that lower appellate order(s) do not deal with all the relevant issues narrated herein before affirming the Assessing Officer's action in the two assessment year(s). We sought to know as to whether the tax prayer had filed all the relevant details regarding TDS and other issues or not. We are taken to case records suggesting him to have placed all documents as record *qua* legal plea alongwith the relevant reopening reasons, with payment details of head-wise charges, TDS deposit challans, Central Excise, ESI and PF donation and subscription, interest paid to bank for loan and utilization of funds, reply to show cause notice as well as shipment charges; both during assessment as well as the lower appellate proceedings. Learned Departmental Representative fails to dispute the fact that the CIT(A) has not considered the same on merits as well. We therefore deem it appropriate in larger interest of justice that Learned CIT(A) needs to grant one more innings to the assessee

to present his case on all issues in both impugned assessment year(s). We make it clear that the assessee shall be afforded three effective opportunities of hearing instant order would be deemed to have been vacated if he fails to conclude final arguments within the said stipulated opportunities of hearing. These two assessee's appeals are accepted for statistical purpose in above terms.

4. These two assessee's appeals are allowed for statistical purpose.

Order pronounced in the open court 31/05/2018

Sd/-
(लेखा सदस्य)
(Dr. A.L. Saini)
(Accountant Member)
Kolkata,
*Dkp, Sr.P.S

दिनांक:- 31/05/2018 कोलकाता ।

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

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

1. आवेदक/ Assessee-
2. राजस्व/Revenue-
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,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।