

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

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

**ITA No.843/Kol/2017**  
Assessment Year :2011-12

Rajesh Agarwal C/o S. L. Kochar, Advocate, 86, Canning Street, Kolkata-700001 <b>[PAN No.ADHPA 3042 Q]</b>	<b>V/s.</b>	Income Tax Officer, Ward-36(1), 110, Shanti Pally, Kolkata-700 107
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Anil Kochar, Advocate
प्रत्यर्थी की ओर से/By Respondent	S.M.S. Tauheed, Addl. CIT-SR-DR
सुनवाई की तारीख/Date of Hearing	05-06-2018
घोषणा की तारीख/Date of Pronouncement	13-06-2018

**आदेश /O R D E R**

**PER S.S.Godara, Judicial Member:-**

This assessee's appeal for assessment year 2011-12 is directed against the Commissioner of Income Tax (Appeals)-10, Kolkata's order dated 10.11.2016, in case No.353/W-36(1)/2014-15/Kol upholding Assessing Officer's action imposing penalty of ₹1.50 lakh imposed by the Assessing Officer in order dated 15.09.2014, in proceedings u/s 144 r.w.s 271B of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties.

2. It emerges at the outset that instant appeal suffers from delay of 92 days in filing. Learned counsel representing assessee invites our attention to assessee's condonation affidavit dated 21.03.2017 attributing the delay in question to various procedural aspects. The Revenue fails to dispute the said solemn averments. We therefore observe that the impugned delay of 92 days in filing of the instant appeal is neither intentional nor deliberate. The same stands condoned.

3. We now advert to the merits of the correctness of the impugned penalty imposed by both the lower authorities u/s 271B of the Act citing assessee's failure to get its account audited. Both learned Representatives indicate that a co-ordinate bench of this tribunal in assessee's case ITA No.839 to 842/Kol/2017 for preceding assessment year decided on 13.04.2018 has restored the very issue back to the Assessing Officer to verify its contention with the following directions:-

*"... .. We, therefore, restore this matter to the file of the AO with the direction to verify the claim of the assessee of having not maintained any regular books of account for all the four years under consideration from the relevant record and decide the issue in the light of the decision of hon'ble Gauhati High Court in the case of Suraj Mal Parasuram Todi (supra) and Allahabad High Court in the case of Bisauli Tractors (supra). The AO is also directed to verify another contention raised by the learned counsel for the assessee that the penalties of Rs.1,47,702/- and Rs.1,35,820/- imposed for AY 2008-09 and 2009-10 respectively are more than the maximum penalty of rs.1,00,000/- leviable for the said years and allow appropriate relief to the assessee accordingly."*

There is no distinction on facts or law being pointed out at the instance of either of the two parties before us in the impugned assessment year. We therefore adopt judicial consistency to restore the instant issue back

to the Assessing Officer by adopting the above directions mutatis mutandis in the impugned assessment year.

3. This assessee's appeal is allowed for statistical purpose.

Order pronounced in the open court 13/06/2018

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

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

दिनांक:- 13/06/2018 कोलकाता ।

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

1. अपीलार्थी/Appellant-Rajesh Agarwal, C/o S.L. Kochar Advocate, 86, Canning St. Kol-01
2. प्रत्यर्थी/Respondent-ITO Ward-36(1), 110, Shanti Pally, Kolkata-107
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 ।