

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

BEFORE SHRI A. T. VARKEY, J.M & DR. A.L. SAINI, A.M

आयकर अपीलसं./ITA No.1543/Kol/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

Arindam Mukherjee	Vs.	ACIT, Circle-31, Kolkata
79/1, Serpentine Lane, Kolkata – 700 014.		10, Middleton Row, Kolkata – 700 071.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AEVPM 3352 Q		
(Appellant)	..	(Respondent)

Appellant by : Shri I. Banerjee, FCA
Respondent by : Shri A. Bhattacharjee, Addl. CIT

सुनवाईकीतारीख/ Date of Hearing : 03/07/2018

घोषणाकीतारीख/Date of Pronouncement : 13/07/2018

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the assessee pertaining to Assessment Year 2012-13, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-9, Kolkata in Appeal No.76/CIT(A)-9/Wd-3192/2015-16/Kol which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 23.03.2015.

2. The grievances raised by the assessee are as follows:

"1. That on the facts and circumstances of the case, the Appeal Order, passed Ex-Parte, by the Ld. CIT(A), for being patently wrong, contrary to facts on record and lastly, not conforming to law relating to adjudication of Appeals, is liable to be reversed, cancelled and rendered ineffective.

2. *That on the facts and circumstances of the case and in law, the Ld. CIT(A), should not have dismissed the Appeal by means of an ex-parte Order, on the alleged ground of non appearance on 21st March 2017, by taking no notice of the duly presented and acknowledged adjournment application.*

3. *Without prejudice to Ground No. 2 above, even otherwise, the Ld. CIT(A) instead of simply dismissing the Appeal for the alleged ground of non-appearance, ought to have perused the Written Submissions, Reports, Cited pertinent judgments etc.,adduced and partly discussed in course of Appeal Hearing and thereupon, passed aspeaking Order, addressing all the Grounds on respective Merits.*

4. *The Appellant craves leave to .supplement, modify, not press, any one or more of theforegoing Grounds as well as, adopt additional grounds, either before or during theAppeal Hearing.”*

3. At the outset, the ld. Counsel for the assessee has submitted before us that impugned order is an ex parte order and the assessee could not plead his case before the ld. CIT(A). The ld. CIT(A) passed the ex parte order stating the following:

“2. In this case addition has been made amounting to Rs.2,00,56,870 on account of capital gain. Notice has been issued on 04/04/2016 fixing hearing on 22/04/2016. On 22/04/2016, the AR of the appellant filed a letter and requested for an adjournment. A fresh notice of hearing was fixed on 12/05/2016. On 13/05/2016, the AR of the appellant attended and requested for an adjournment and the same was adjourned to 25/05/2016. On 24.05.2016, the AR of the appellant again attended and filed written submission which was sent for remand report from the A.O. On 14/07/2016 the AR of the appellant received copy of the remand report for rejoinder. The case was again re-fixed for hearing on 21/03/2017 but there was no compliance on the part of the appellant.

Since there is no compliance during the appellate proceedings and there is no new fact/details available for consideration, I do not find any infirmity in the A.O’s order. Therefore, appeal is dismissed.”

The ld. Counsel pointed out that when the case was again re-fixed for hearing on 21.03.2017, as mentioned above in para No.2 of the order of ld CIT(A), the assessee has filed adjournment application but the ld. CIT(A) ignored it. At the

time of hearing, the copy of the adjournment application, seeking adjournment on 21.03.2017, was submitted to the Bench for perusal (Vide Annex-1). The Id. Counsel has stated that assessee has raised Ground No.1 & 2 before the Hon`ble Tribunal stating his main grievance that the Ld. CIT(A) should not have dismissed the appeal by passing an *ex-parte* order, on the alleged ground of non-appearance on 21st March 2017 as the assessee had requested for adjournment and had participated in the appellate proceedings.

4. We note that the rules of natural justice are rooted in all legal systems and are not any new theology. The rules of natural justice, are manifested in the twin principles of *nemo judex in parte sua* (no person shall be a judge in his own case) and *audi alterem partem* (the right to be heard). It should be noted that the aim of natural justice is to secure justice. The principle of "*audi alteram partem*" only means that the party affected should be given sufficient opportunity to meet the case against him. [Kashmir Vastralaya Vs CIT (Pat) 112 ITR 630]. In the assessee`s case under consideration, no sufficient opportunity was given by Id CIT(A).

5. We note that by taking no notice of the duly presented and acknowledged adjournment application of the assessee, the Id CIT(A) has violated the principle of natural justice and it is a gross negligence of the part of Id CIT(A). The Id CIT(A) while alleging the non-appearance on 21.03.2017, had never ever bothered to peruse the Appellate Folder to examine the adjournment application of the assessee.

Besides, the Id CIT(A) did not discuss the assessee`s case on merit, based on the material available before him. The Id CIT(A), in para 2 of his order, as mentioned above, has himself admitted as follows:

2.....*On 24.05.2016, the AR of the appellant again attended and filed written submission which was sent for remand report from the A.O.....*”

Thus, it is abundantly clear that assessee has submitted written submissions during the appellate proceedings and Id CIT(A) sent these submissions to assessing officer to take remand report from him. The Id CIT(A) neither considered the written submissions of the assessee nor he waited for remand report, hence the assessee`s case has not been adjudicated on merits and on the bases of the material available on record, therefore it is violation of principle of natural justice, and hence, we are of the view that the Appellate Order is unsustainable and bad in law.

We note that a perusal of the body of the impugned order, it is apparent that it is an *ex parte* order which has been challenged by the assessee for want of proper opportunity. We are of the view that one more opportunity should be given to the assessee to plead his case before the Id CIT(A). Therefore, considering the entirety of the facts and circumstances, we deem it fit and appropriate in the interest of justice and fair play, to set aside the order of the Id. CIT(A) and remand the matter back to the file of Id CIT(A) to adjudicate the issue afresh on merits. The Id. DR for the Revenue did not have any objection if the matter is remitted back to the file of the Id. CIT(A). For statistical purposes, the appeal of the assessee is treated as allowed.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 13.07.2018.

Sd/-
(A. T. VARKEY)

न्यायिकसदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date:13/07/2018

(RS, Sr. PS)

Sd/-
(A. L. SAINI)

लेखासदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- Arindam Mukherjee
2. प्रत्यर्थी/ The Respondent- ACIT, Circle-31, Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A)-4
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.