

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA
BEFORE SHRI S.S. GODARA, JM & DR. A.L. SAINI, AM**

ITA No.1351/Kol/2017
(Assessment Year: 2007-08)

Britannia Industries Ltd.	Vs.	JCIT(TDS), Kolkata
C/o. Pramod Kumar Saraf, Advocate, 238B, A.J.C. Bose Road, 1 st Floor, Kolkata – 700 020.		10B, Middleton Row, Kolkata – 700 071.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABC B 2066 P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by : Shri D. S. Damle, FCA
Revenue by : Shri A. Bhattacharjee, Addl. CIT

सुनवाई की तारीख / **Date of Hearing :** 12/07/2018
घोषणा की तारीख/**Date of Pronouncement:** 05/10/2018

आदेश / O R D E R

Per Dr. A. L. Saini, AM:

The captioned appeal filed by the assessee pertaining to Assessment Year 2007-08 is directed against the order passed by Id. Commissioner of Income Tax (Appeals)-5, Kolkata in Appeal No.1636/CIT(A)-24/Kol/15-16 dated 31.03.2017 which in turn arises out of an assessment order passed by the Assessing Officer u/s 271C of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. At the outset itself, the Id. Counsel for the assessee assailed the impugned order by contending that the assessee could not represent his case before Ld. CIT(A) and the order being an ex-parte order, stood vitiated on account of violation of principle of natural justice. The Id. Counsel for the assessee contended that in the interest of justice, another opportunity to contest the appeal before the Ld. first appellate authority may be granted to the assessee. The Id. DR for the Revenue debarred from objecting the stand of the Id. Counsel.

3. We note that in the assessee's case under consideration, the impugned order passed by the ld. CIT(A) is an *ex parte* order, therefore, we do not wish to make any comments on the merits of the grounds raised by the assessee. The ld. CIT(A) has passed the *ex parte* order stating the following:

3. *The present appeal is against the order u/s 271C passed by the Assessing Officer. I have carefully perused the grounds of appeal and the order of the A.O. The appellant has failed to offer any explanation or submission in support of the grounds raised in this appeal nor any supporting evidences were produced by it despite adequate opportunity having been provided. Merely raising of grounds alone without supporting cannot be the basis for claiming relief.*

5. *In the instant case the appellant is not able to show that the decision of the Assessing Officer was arbitrary, biased, irrational, vindictive or capricious without any basis. I find no reason to interfere with the decision of the A.O.*

6. *In the result, appeal filed by the appellant is dismissed, by not allowing any grounds of appeal."*

4. We note that the assessee has raised Ground No.1 & 2 stating as follows:

"1. For that on the facts and in the circumstances of the case, the CIT(A) was unjustified on facts and in law in dismissing the appeal ex-parte, without adjudicating the appeal on merits."

2. For that on the facts and in the circumstances of the case, the CIT(A) should not have dismissed the appeal without giving adequate opportunity of being heard."

5. 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 note that ld CIT(A) did not consider the assessment records and findings of ld assessing officer to decide the various issues on merits. Therefore, we are of the view that one more opportunity should be given to the assessee to plead his case before the ld CIT(A).

6. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to Ld. CIT(A) for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the

issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order pronounced in the open court on this 05/10/2018.

Sd/-

(S. S. Godara)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

Dated:05/10/2018

RS, Sr. PS

Sd/-

(A. L. Saini)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- Britannia Industries Ltd.
2. प्रत्यर्थी / The Respondent.- JCIT(TDS), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

//True Copy//

By Order

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