

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

**BEFORE SHRI S. S. GODARA, JM & DR. A. L. SAINI, AM**

**आयकरअपीलसं./ITA No.2083/Kol/2017**

**(निर्धारण वर्ष / Assessment Year: 2012-13)**

<b>Akanksha Towers Private Limited</b> 57A, Kali Krishna Tagore Street, Posta Bazar, Kolkata – 700 007.	<b>Vs.</b>	<b>ITO, Ward-9(1), Kolkata</b> Aayakar Bhawan, P-7, Chowringhee Square, Kol-700 069.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAGCA 6999 P</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Shri N. Sheth, ACA  
Respondent by : Shri C.J. Singh, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 25/10/2018

घोषणाकीतारीख/Date of Pronouncement : 28/11/2018

**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)-12, Kolkata in appeal No.101/CIT(A)-12/Ward-9(1)/2016-17 dated 29.06.2017 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 13.03.2015.

2. At the outset itself, the ld. 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 ld counsel stated before us that assessee has not been given adequate opportunity by the ld. CIT(A).

4. We note that ld. CIT(A) has passed the *ex parte* order observing the following:

*“The instant case was originally lying under the jurisdiction of the office of CIT(A)-3, Kolkata where the appellant filed this appeal on 23.04.2015 challenging against the order u/s 143(3) of the Income Tax Act, 1961 dated 13.03.2015. Subsequently this case has been transferred to the office of the CIT(A)-12, Kolkata in obedience to the order of the Hon’ble Pr. CCIT, West Bengal and Sikkim vide order No.05 of 2017 under Sub-Section (1), (2) & (3) of Section 120 of the Income Tax Act, 1961 dated 14.03.2017. In obedience to the order of the Pr. CCIT, West Bengal and Sikkim, initially the case was fixed for hearing on 22.03.2017 vide Notice u/s 250 Income Tax Act, 1961 dated 15.03.2017. In compliance to this notice, a letter dated 15.03.2017 on the part of the appellant was filed to the office of the undersigned with a request to adjourn the case for hearing. The request of the appellant was duly considered and the case was then fixed for hearing on 10.04.2017. On that day a letter dated 10.04.2017 on the part of the appellant was again filed to the office of the undersigned with a request to adjourn the case for hearing. The request of the appellant was duly considered and the case was then fixed for hearing on 09.05.2017. Again, this case was fixed for hearing on 25.05.2017. The appellant filed the letters on 09.05.2017 and 25.05.2017 with request to adjourn the case for hearing due to his indisposition. However, the appellant was provided another opportunity for hearing the case on 23.06.2017. Neither the appellant nor the A.R of the appellant appeared before the undersigned to represent this case on 23.06.2017. Besides, no written submission was furnished on the part of the appellant to substantiate its claim preferred in the grounds of appeal till today.*

*Under the circumstances, it is presumed that the appellant is not interested to pursue this appeal and it has nothing to say in defence of the grounds of appeal taken. Therefore, I have no option but to decide the appeal on merits on the basis of materials available on record.”*

We note that in assessee’s case, the jurisdiction of Commissioner (Appeals) was changed. Assessee submitted letter dated 15.03.2017 for adjournment. It means the assessee was participating in appellate proceedings. Therefore, it seems to us that Id CIT(A) ought to have given more opportunity to the assessee to defend his case, hence we consider it violation of principle of natural justice, as sufficient opportunity of being heard was not given to the assessee.

5. We note that in the assessee’s case under consideration, the assessment was carried out u/s 143(3) of the Act and the impugned order passed by the Id. 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.

6. 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, 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 is pronounced in the open court on 28.11.2018.

Sd/-  
(S. S. GODARA)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date:28/11/2018

(RS, Sr.PS)

Sd/-  
(A. L. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant- Akanksha Towers Private Limited
2. प्रत्यर्थी/ The Respondent- ITO, Ward-9(1), 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

Assistant Registrar,  
I.T.A.T, Kolkata Benches,  
Kolkata.