

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

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

आयकरअपीलसं./ITA No.1643/Kol/2017

(निर्धारण वर्ष / Assessment Year: 2003-04)

Mallika Investment Co. P. Ltd. C/o. S.N. Ghosh & Associates, Advocates, "Seven Brothers' Lodge, P.O. Buroshibtala, P.S. Chinsurah, Dist-Hooghly, Pin- 712 105.	Vs.	ITO, Ward-4(2), Kolkata Aayakar Bhawan, P-7, Chowringhee Square, Kol-700 069.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCM 7336 B		
(Appellant)	..	(Respondent)

Appellant by : Shri Somnath Ghosh, Advocate
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 2003-04, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata in appeal No.287/CIT(A)-2/14-15 dated 10.04.2017 which in turn arises out of an assessment order passed by the Assessing Officer u/s 154 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.08.2004.

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 he has filed written submission on 05.04.2017, the ld. CIT(A) has not considered the same and the ld. CIT(A) has not passed the order on merit. Therefore, the ld.

Counsel contended that in the interest of justice, another opportunity to contest the appeal before the first appellate authority may be granted to the assessee. The Id. DR for the Revenue refrained from objecting the stand of the Id. Counsel.

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

“The AR of the appellate did not appeared but filed his reply in dak on 05.04.2017, which is placed on record. I have considered the submission of the appellate, ground of appeal and statement of facts filed by the assessee and also the order as passed by the Assessing Officer. The Assessing Officer has already discussed the issue in details with all the facts and relevant evidences on record while passing the order. I agree with the view as taken by the A.O. In view of above, the order of the A.O is hereby upheld and the appeal of the appellant is dismissed.

In the result, the appeal of the appellant is dismissed.”

Therefore, it seems to us that Id CIT(A) ought to have considered the written submission of the assessee and 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 and written submissions of the assessee were not considered.

5. We note that in the assessee’s case under consideration, 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. The CIT(A) did not consider written submission of the assessee. 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 Id. CIT(A) and remit the matter back to the file of the Id. 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- Mallika Investment Co. P. Ltd
2. प्रत्यर्थी/ The Respondent- ITO, Ward-4(2), 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.