

आयकर अपीलीय अधीकरण, न्यायपीठ – “A(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A(SMC)” BENCH: KOLKATA
 (समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri A. T. Varkey, JM]

I.T.A. No. 1992/Kol/2018
Assessment Year: 2009-10

M/s. Garima Investment & Trading Company Ltd., (PAN: AAACG9916G)	Vs.	Deputy Commissioner of Income-tax, Circle-11(1), Kolkata.
Applicant		Respondent

Date of Hearing	15.01.2019
Date of Pronouncement	15.01.2019
For the Applicant	Shri Manoj Kataruka, A.R.
For the Respondent	Md. Ghayas Uddin, Addl. CIT

ORDER

Per Shri A.T.Varkey, JM

This appeal filed by the assessee against the order of Ld. CIT(A)-4, Kolkata dated 23.05.2018 for AY 2009-10.

2. We note that the appeal of assessee is time barred by 49 days and assessee has filed a condonation petition wherein it has explained the delay that the ex parte order of the Ld. CIT(A) was communicated through e-mail on 31.05.2018 in the e-mail account of Late Moolchand Sharma, who was the company accountant and that he expired on 01.02.2017. Assessee also stated that the assessee seldom used the same e-mail and, therefore, when the ID was checked on 31.08.2018 the order was found and communicated immediately to the advocate dealing with the matter. Hence, he urged before the bench to condone the delay in filing the appeal before the Tribunal. The Ld. DR has also no objection to condone the delay. Hence, we condone the delay and admit the appeal for adjudication.

3. The main grievance of the assessee in this appeal is against the action of Ld. CIT(A) in upholding by an ex parte order the addition of Rs.3,16,688/- on account of bogus loss made by the AO and also confirming the action of AO to issue notice u/s. 148 of the Income-tax Act, 1961 (hereinafter referred to as the “Act” in framing order passed u/s.

147/143 of the Act, which, according to Ld. AR, was in violation of the principles of natural justice in having passed the ex parte order qua the assessee without affording adequate opportunity of being heard to the assessee and without ensuring the last notice fixing hearing on 22.05.2018 was never served upon the assessee for which the assessee has filed an affidavit. Hence, he urged before the bench to set aside the ex parte order of Ld. CIT(A) and remand the matter back to his file for fresh adjudication. Ld. DR has opposed this prayer of the assessee.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that since there is reasonable cause for assessee not appearing before the Ld. CIT(A) as stated above and the Ld. CIT(A) passed the order ex parte, we set aside the order of the Ld. CIT(A) and remand the matter back to the file of the Ld. CIT(A) to decide the appeal afresh after affording reasonable opportunity of being heard to the assessee in accordance to law.

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

Order is pronounced in the open court on 15 January, 2019.

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 15 January, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Garima Investment & Trading Company Ltd., 2nd floor, Bangur Building, 14, Netaji Subhash Road, Kolkata-700 001.
2. Respondent – DCIT, Circle-11(1), Kolkata.
3. CIT(A)-4, Kolkata(sent through e-mail)
4. CIT, Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar