

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
 (समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 273/Kol/2018
Assessment Year: 2012-13

M/s. Tamkore Investment Pvt. Ltd. (PAN: AA ACT9561E)	Vs.	Income-tax Officer, Wd-4(1), Kolkata
Appellant		Respondent

Date of Hearing	21.01.2019
Date of Pronouncement	21.01.2019
For the Appellant	Shri Subrata Sinha, AR
For the Respondent	Shri Shankar Halder, Sr. DR

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the assessee is against the order of the Ld. CIT(A)-2, Kolkata dated 22.09.2016 for AY 2012-13.

2. At the outset itself, the Ld. AR brought to our notice that the Ld. CIT(A) has dismissed the appeal of the assessee by passing an ex parte order taking note that no oral/written submission was filed before him against the decision of the AO. Before us, the Ld. AR contended that the AR who was entrusted with the appeal could not properly present himself/plead before the first appellate authority and, therefore, for the omission on the part of the Ld. AR of the assessee, the assessee should not be penalized. The Ld. DR does not want us to interfere in the order passed by the Ld. CIT(A).

3. However, we note that the Ld. CIT(A) has dismissed the appeal of the assessee because neither the Ld. AR of the assessee appeared nor filed any written submission so, the impugned order was passed ex parte. Assessee's appeal before the Ld. CIT(A) is a

statutory right, vested on the assessee and because of the inaction/omission on the part of the Ld. AR cannot come in the way of justice; and for the laxity on the part of the Ld. AR, the assessee cannot be penalized. Therefore, in the light of the aforesaid observation, we are inclined to set aside the order of the Ld. CIT(A) and remit the matter back to the file of the Ld. CIT(A) with a direction to adjudicate the appeal on merit after hearing the assessee in accordance to law. We also direct the assessee to appeal before the Ld. CIT(A) on 11.02.2019 and the Ld. CIT(A) to fix the hearing after that and the assessee to participate and plead its case before the first appellate authority.

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

Order is pronounced in the open court.

Sd/-
(Dr. A. L. Saini)
Accountant Member

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

Dated: 21st January, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – M/s. Tamkore Investment Pvt. Ltd., Room No.302, Vaishno Chambers, 6, Brabourne Road, Kolkata-700 001.
- 2 Respondent – ITO, Ward-4(1), Kolkata
- 3 CIT(A)-2, Kolkata (sent through e-mail)
- 4 CIT , Kolkata.
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,
Assistant Registrar