

आयकर अपीलीय अधिकरण, 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. 956/Kol/2018**  
**Assessment Year: 2013-14**

M/s. Utsav Agro Products Ltd., (PAN: AAACU6657Q)	Vs.	Income-tax Officer, Wd-12(1), Kolkata
Appellant		Respondent

Date of Hearing	21.01.2019
Date of Pronouncement	28.02.2019
For the Appellant	N o n e
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)-4, Kolkata dated 05.02.2018 for AY 2013-14.

2. At the outset itself, we note that no one is present on behalf of the assessee at the time of hearing. However, we note that the impugned order of the Ld. CIT(A) is an ex parte order wherein he notes that on five occasions the matter was listed and only once i.e. on 06.11.2017 adjournment was sought. So taking into consideration the fact that none appeared before him, the Ld. CIT(A) taking note of the decision of CIT Vs. Multiplan India Pvt. Ltd. 38 ITD 320 dismissed the appeal for non-appearance. We note from the perusal of the grounds of appeal preferred before us that the assessee is aggrieved by the action of AO taken u/s. 154 of the Act which resulted in tax effect of Rs.91,39,740/-. We note that on the date of hearing on 06.11.2017, the Ld. AR of the assessee has sought adjournment and thereafter, since the assessee/Ld. AR of the assessee did not appear thereafter for two

hearings Ld. CIT(A) was pleased to dismiss the appeal. The assessee's statutory right before the First Appellate Authority has been decided by the Ld. CIT(A) without going into the merits for non-appearance of assessee/Ld. AR of the assessee cannot be countenanced. Therefore, in the interest of justice, the first appellate authority must give opportunity to assessee by issue and service of notice on assessee and thereafter to decide the appeal on merits, after hearing the AR/assessee. Therefore, in the interest of justice and fair play, we are inclined to set aside the order of Ld. CIT(A) and remand the matter back to the Ld. CIT(A) to decide the appeal on merits and pass a speaking order after hearing the Ld. AR of the assessee in accordance to law.

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

Order is pronounced in the open court on 28<sup>th</sup> February, 2019.

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

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

Dated: 28th February, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – M/s. Utsav Agro products Ltd., 7<sup>th</sup> floor, Annapurna Apartment, 68, Ballygunge Circular Road, Kolkata-700 019.
- 2 Respondent – ITO, Ward-12(1), Kolkata
- 3 CIT(A)-4, Kolkata (sent through e-mail)
- 4 CIT , Kolkata.
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Assistant Registrar