

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

I.T.A. No. 2040/Kol/2018
Assessment Year: 2015-16

Lalit Prasad Agarwal (PAN: ACHPA2287J)	Vs.	Income-tax Officer, Ward-61(3), Kolkata
Appellant		Respondent

Date of Hearing	28.01.2019
Date of Pronouncement	01.03.2019
For the Appellant	Shri Deepak Kumar Agarwal, Ld. CIT(A), CS
For the Respondent	Md. Altaf Hussain, Addl. CIT, Sr. DR

ORDER

Per Shri A.T.Varkey, JM

This appeal filed by the assessee against the order of Ld. CIT(A)-19, Kolkata dated 30.07.2018 for AY 2015-16.

2. At the outset itself, it has been brought to our notice by the Ld. Counsel for assessee that the Ld. CIT(A) has passed an ex parte order. It was brought to our notice that on the first date of hearing of the appeal, the Ld. AR appeared before the Ld. CIT(A) and during the second hearing since the Ld. AR was suffering from fever could not attend the hearing. So, later when he went to the office of Ld CIT(A) to enquire about the next date of hearing, he was astonished to know that the appeal has been dismissed for non-appearance of the AR of the assessee. Therefore, the Ld. AR pleads that no proper opportunity was granted by the Ld. CIT(A) while deciding the appeal of the assessee. So, he prayed that the matter may be remanded back to the file of the Ld. CIT(A). On the other hand, the Ld. DR vehemently opposes this plea of the assessee and contended that the assessee/Ld. AR was

not vigilant during the appellate proceeding and reminded us that the law does not help the sleeping person, therefore, the appeal should not be remanded back to the Ld. CIT(A).

3. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the first appellate authority has decided the case ex parte without going into the merits of the case. Justice should not only be done but should be seemed to be done. In this case since Ld. AR of the assessee appeared before the Ld. CIT(A) on the first date of hearing and his absence for the second date was for reasonable cause being prevented by fever, the Ld. CIT(A) should have given an opportunity before deciding the appeal ex parte that too without going to the merits. This action of Ld. CIT(A) cannot be countenanced and, therefore, we set aside the impugned order of the Ld. CIT(A) and remand the matter back to his file to decide the appeal on merits after providing adequate opportunity of being heard to the assessee.

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

Order is pronounced in the open court on 1st March, 2019.

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

Dated : 1st March, 2019

Jd. (Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Lalit Prasad Agarwal, 1st floor, Flat No. 103A, Akash Ganga, 22, Krishna Kamal Bhattacharjee Lane, Howrah-711101.
2. Respondent – ITO, Ward-61(3), Kolkata.
3. CIT(A)-19, Kolkata (sent through e-mail)
4. CIT, Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar