

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

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

आयकरअपीलसं./ITA No.1945/Kol/2018

(निर्धारणवर्ष / Assessment Year: 2013-14)

Bally Exports Pvt. Ltd. P-26B, Kasba Industrial Estate, Phase-III, Kolkata-700107.	Vs.	DCIT, Circle-6(1), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCB 2053 L		
(Assessee)	..	(Revenue)

Assessee by : Shri B. K. Poddar, FCA

Respondent by : Shri Shankar Halder, JCIT Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 27/03/2019

घोषणाकीतारीख/Date of Pronouncement : 29/03/2019

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the assessee , pertaining to assessment year 2013-14, is directed against the order passed by the Commissioner of Income Tax (Appeal)-2 , Kolkata, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 24.03.2016.

2. At the outset itself, the ld. Counsel submitted before us, that during the appellate proceedings, following notices were issued for hearing in the matter. The details of these notices along with remarks are as under:

Date of Notice	Date of hearing	Remarks
26.04.2018	23.05.2018	The case was fixed for hearing today but none appeared nor was an adjournment petition filed on behalf of the assessee.
23.05.2018	08.06.2018	The AR of the appellant filed a letter dated 07.06.2018 for adjournment and case was adjourned for 12.07.2018 being last adjournment.
	12.07.2018	The case was fixed for hearing today but none appeared nor was and adjournment petition filed on behalf of the assessee.

This appeal is fixed for hearing on 12.07.2018 instead of 17.07.2019. The assessee requested the Id. CIT(A) to adjourn the case on 17.07.2019 but Id. CIT(A) conducted the hearing on 12.07.2019 therefore at the time of hearing the assessee could not appear before the Id. CIT(A). Hence he could not plead his case properly. Hence the order being an ex-parte order, stood vitiated on account of violation of principle of natural justice. The Id. Counsel for the assessee contended that in the interest of justice, another opportunity to contest the appeal before the Id. first appellate authority may be granted to the assessee.

3. The Id. Counsel for the assessee submitted that the assessee filed an Affidavit to prove the bona fide of his claim that sufficient opportunity of being heard had not given to him. The relevant portion is given below for ready reference:

“1. That on 17.07.2018, the date fixed for hearing of Appeal no. 2/101042/2016-17 for A.Y. 2013-14, I visited the office of commissioner of Income Tax(A)-2 to file the enclosed letter requiring for adjournment but the person concern asked me to come on 18.07.2018 and did not accept the letter.

2. That again 18.07.2018 I appeared before the said person along with the enclosed letter, but he did not accept the letter again and inform me that the order has been already passed on 16.07.2018.

3. That the above statements are true to my knowledge.”

4. We have heard both the parties and perused the material available on record. We note that the Id. CIT(A) did not communicate the date of adjournment. We also note that the Id. CIT(A) did not consider the assessment records and did not pass order on merits based on the documents available before him hence it is a violation of principle of natural justice. We note that the Id. CIT(A) failed to determine the obligations and rights of the assessee. We note that it is settled law that principles of natural justice and fair play require that the effected party is granted sufficient opportunity of being heard to contest his case. Hence we are of the view that one more opportunity should be given to assessee to plead his case before 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 the file of 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 allowed.

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

Order pronounced in the Court on 29.03.2019

Sd/-
(S.S.VISWANETHRA RAVI)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 29/03/2019

(SB, Sr.PS)

Copy of the order forwarded to:

1. Bally Exports Pvt. Ltd.
2. DCIT, Circle-6(1), Kolkata
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches