

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
 (समक्ष)श्री पी. एम.जगताप, उपाध्यक्ष एवं श्री ए.टी. वर्की,न्यायिक सदस्य)
 [Before Shri P.M. Jagtap, Vice President & Shri A. T. Varkey, JM]

I.T.A. Nos. 617 to 619/Kol/2018
Assessment Year: 2009-10

Satya Narayan Sharma (PAN: AKLPS3545D)	Vs.	Income-tax Officer, Wd. 45(2), Kolkata
Appellant		Respondent
Date of Hearing		07.02.2019
Date of Pronouncement		03.04.2019
For the Appellant		Shri Pratyush Jhunjhunwala, Advocate
For the Respondent		Shri Shankar Halder, JCIT, Sr. DR

ORDER

Per Shri A.T.Varkey, JM

All these appeals preferred by the assessee against the separate orders of Ld. CIT(A)-13, Kolkata dated 12.11.2015 for AY 2009-10 in respect of his action confirming the penalty imposed u/s. 271B, 271(1)(c) and 271F of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

- At the outset, ld. AR of the assessee drew our attention to the fact that the orders passed by the Ld. CIT(A) are ex parte orders in nature.
- First, we take up the penalty orders passed u/s. 271B and 271F of the Act. The Ld. AR pointed out that though different orders have been passed on 01.11.2017 in respect of confirmation of penalties, however, the assessee received the notice fixing the date of hearing of the appeal on 06.11.2017 and placed a copy of the notice before us. We have perused the notice and take note that the notice fixing the date of hearing before Ld. CIT(A) is noted as on 06.11.2017 whereas the impugned order has been passed five days before the date of hearing, therefore, there is a clear violation of natural justice and, therefore, we set aside the orders of the Ld. CIT(A) and remand the matter back to his file to decide afresh

the appeals after providing adequate opportunity to the assessee according to law. Both these appeals of assessee are allowed for statistical purposes.

4. Coming to the penalty imposed u/s. 271(1)(c) of the Act. We note that the impugned order has been passed on 13.11.2017 and the date of fixing the hearing was on 06.11.2017 whereas the assessee had given an application for adjournment on 24.10.2017 which was filed before the Ld. CIT(A) on 24.10.2017 (which is evident from the seal affixed with the date of the office of the Ld. CIT(A) on the adjournment application), wherein the assessee has pleaded that since he is going to Mumbai on 25.10.2017 and coming back only on the evening of 09.11.2017, he pleaded that the appeal may be fixed on or after 20.11.2017. But the Ld. CIT(A) ignored the adjournment application and fixed the matter on 13.11.2017 and has dismissed the appeal without hearing the assessee. We take note of the notice fixing the appeal on 06.11.2017 and we also take note of the adjournment application filed before the Ld. CIT(A) on 24.10.2017 pleading that the matter may be heard after 20.11.2017. So, we note that the impugned order has been passed on 13.11.2017 overlooking the assessee's adjournment application for just cause, which action of Ld. CIT(A), according to us, is not reasonable or fair and is in violation of Natural Justice, therefore, we set aside the order of the Ld. CIT(A) and remand the matter to his file for fresh adjudication. Thus, this appeal also stands allowed for statistical purposes so all the aforesaid appeals of the assessee are restored back to the file of Ld. CIT(A) as discussed above.

5. In the result, all the appeals of assessee are allowed for statistical purposes.

Order is pronounced in the open court on 3rd April, 2019

Sd/-
(P. M. Jagtap)
Vice President

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

Dated : 3rd April, 2019

Jd. (Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Satya Narayan Sharma, Block-D, Flat-501, Green Valley Complex, Kaikhali Road, Kolkata-700 135.
2. Respondent – ITO, Ward-45(2), Kolkata.
3. CIT(A)-13, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar