

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

**BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.1935/Kol/2018**

**(निर्धारणवर्ष / Assessment Year: 2012-13)**

<b>M/s Happy Trade Links Pvt. Ltd.</b>	<b>Vs.</b>	<b>ITO, Ward-13(2), Kolkata</b>
<b>M/s Alpha Vyapaar Pvt.Ltd., 106, Girish Ghosh Road, 5<sup>th</sup> Floor, Belurmath, Howrah- 711202</b>		
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCH 9159 H</b>		
<b>(Assessee)</b>	<b>..</b>	<b>(Revenue)</b>

Assessee by : Shri Avijit Dey, Advocate  
Respondent by : Shri Shankar Halder, JCIT Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 09/05/2019

घोषणाकीतारीख/Date of Pronouncement : 10/05/2019

**आदेश / O R D E R**

**Per Dr. A. L. Saini:**

The captioned appeal filed by the assessee , pertaining to assessment year 2012-13 is directed against the order passed by the Commissioner of Income Tax (Appeal)-5, Kolkata, which in turn arises out of an assessment order passed by the Assessing Officer u/s 144 of the Income Tax Act, 1961 (in short the Act) dated 26/03/2015.

2. The appeal filed by the assessee is barred by limitation by 104 days. The assessee filed a petition requesting the Bench to condone the delay. We have heard

both the parties on this preliminary issue, and having regard to the reasons given in the petition. We condone the delay and admit the appeal of the assessee.

3. At the outset itself, the Id. Counsel for the assessee assailed the impugned order by contending that the assessee could not represent his case before Ld. CIT(A) and 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 Ld. first appellate authority may be granted to the assessee.

4. We note that the Id. CIT(A) did not consider the assessment records while adjudicating the issue. We note that the Id. CIT(A) did not discuss the assessee's case on merits based on the material available before him hence it is a violation of principle of natural justice. 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. 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 10.05.2019**

Sd/-  
(S.S.GODARA)  
न्यायिकसदस्य / JUDICIAL MEMBER

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

दिनांक/ Date: 10/05/2019  
(SB, Sr.PS)

Copy of the order forwarded to:

1. M/s Happy Trade Links Pvt. Ltd.
2. ITO, Ward-13(2), 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