

आयकर अपीलीय अधीकरण, न्यायपीठ – “C” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” 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. 568/Kol/2018**  
**Assessment Year: 2012-13**

Bengal Intelligent Parks Pvt. Ltd. (PAN: AACCB0276E)	Vs.	Deputy Commissioner of Income-tax, Circle-2(1), Kolkata.
Appellant		Respondent
Date of Hearing	18.09.2019	
Date of Pronouncement	31.10.2019	
For the Appellant	Shri A. K. Tibrewal, FCA	
For the Respondent	Shri Supriyo Pal, JCIT, Sr. DR	

**ORDER**

**Per Shri A.T.Varkey, JM**

This appeal preferred by the assessee is against the order of the Ld. CIT(A)-1, Kolkata dated 21.02.2018 for AY 2012-13.

2. Though the assessee has raised as many as six grounds of appeal but the first and foremost issue is against the action of the Ld. CIT(A) in dismissing the appeal of the assessee without allowing proper and reasonable opportunity of hearing thus violating the principles of natural justice.

3. At the outset itself, the Ld. AR of the assessee brought to our notice that the Ld. CIT(A) has passed the impugned order ex parte without going into merits of the case. According to him, the Ld. CIT(A) has passed the ex parte order after issuing four notices dated 16.11.2017, 21.11.2017, 19.01.2018 and finally on 20.02.2018. He also submitted that due to the reasons beyond its control no doubt, the assessee did not appear before the Ld. CIT(A) but promptly applied for adjournment by filing adjournment applications citing reasons for seeking so. According to the Ld. AR, the Ld. CIT(A)'s power is coterminous as that of the AO. Therefore, the Ld. CIT(A) being the first appellate authority is expected while adjudicating an appeal of an assessee should call for records from the AO and dispose of the appeal on merit even if the assessee did not appear before him. Further, it was also

pointed out that written submission was in fact filed on 30.01.2018 but the Ld. CIT(A) did not bother to look into the same and decided the case ex parte without going into merits of the case. In other words, the Ld. CIT(A) was not justified in dismissing the appeal for non prosecution. In the light of the aforesaid discussion, the Ld. Counsel for the assessee urged us to give one more opportunity so that assessee is able to present its case before the Ld. CIT(A). Per contra, the Ld. DR vehemently opposing the plea of the Ld. AR, pointed out that assessee despite notices purposely failed to appear before the Ld. CIT(A) and so cannot take advantage of his own omissions and the Ld. DR does not want us to interfere in the impugned order on this ground.

4. After hearing the rival submissions, it is noted that the Ld. CIT(A) has confirmed the action of AO by an ex parte order, which we found it to be a cryptic order. However, during the hearing before us, the Ld. AR undertakes that if an opportunity is afforded, the assessee is ready to diligently appear before the Ld. CIT(A). In the aforesaid circumstances, we are of the considered opinion that by giving one more opportunity to the assessee to pursue the appeal before the Ld. CIT(A) may not prejudice the interest of the Revenue in any manner. And it has to be kept in mind that assessee's right to appeal before Ld. CIT(A) is a statutory right and the Ld. CIT(A) is bound by law to discharge the appellate jurisdiction by adjudicating the issue both in respect of fact and law in accordance to law. While discharging this appellate jurisdiction, the assessee/Ld. AR needs to be heard or the written submission and paper book need to be considered before passing the appellate order which ideally should be speaking order. Therefore, we set aside the order of the first appellate authority and remand the matter back to the file of Ld. CIT(A) to adjudicate the appeal afresh in accordance to law, after affording reasonable opportunity of being heard to the assessee and the assessee is directed to diligently participate in the appellate proceedings.

6. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order is pronounced in the open court on 31 October, 2019.

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

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

Dated : 31 October, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Bengal Intelligent Parks Pvt. Ltd., Bldg. Beta, Gr. Floor,  
Bengal Intelligent Park Block EP & GP, Salt Lake Electronics Complex,  
Sector-V, Salt Lake City, Kolkata-700 091.
2. Respondent – DCIT, Circle-2(1), Kolkata.
3. CIT(A)-1, Kolkata
4. CIT-, , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar