

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]

**ITA No.1263/Kol/2019**  
**Assessment Year: 2012-13**

BCT Infrastructure LLP (PAN: AAJFB9971A)	Vs.	Income-tax Officer, Wd-28(1), Kolkata
Appellant		Respondent
Date of Hearing		25.11.2019
Date of Pronouncement		06 .12.2019
For the Appellant		Shri Ram Ratan Modi, FCA
For the Respondent		Shri Jayanta Khanua, JCIT, Sr. DR

**ORDER**

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-12, Kolkata dated 06-07-2018 for the assessment year 2012-13.

2. At the outset itself, it is noted that there is a delay of 215 days. In order to explain the delay the assessee had filed a condonation petition as well as an affidavit explaining the cause of delay. According to Ld. AR, the Ld. CIT(A) has dismissed the appeal on the pretext that assessee/Ld. AR was not present before him on 29.06.2018. According to Ld. AR, this very basis for dismissal of appeal without going into merits of the appeal is erroneous. The Ld. AR submitted that he himself was present on the last date of hearing before the Ld. CIT(A) who not only heard any appeals listed on that day, but a staff of his office informed him that all the cases listed on that day are being adjourned and the next date of hearing would be informed by way of a notice. However, to the utter astonishment of the assessee, the Ld. CIT(A) passed an ex parte order dismissing the appeal of the assessee. Since the ex parte order itself was erroneous and since Ld. AR was present on the last date of hearing as discussed (supra) the assessee filed a petition under sec. 154 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) for recalling the ex parte order and awaited the outcome of this section 154 petition by the Ld. CIT(A). And realizing that Ld. CIT(A) is not bothered to dispose of the section 154 application, then the assessee preferred this appeal before the Tribunal. Since no action was taken by the Ld. CIT(A) in the application u/s. 154 of the Act, therefore, there was a delay of 214 days in filing this

appeal before the Tribunal which was not intentional. It is noted that an affidavit has been filed explaining the aforesaid reasons and taking note of the submission of the Ld. AR before the Bench, I for the reasons stated above is of the opinion that there was a reasonable cause for non-filing of the appeal in time, therefore, I am inclined to condone the delay and admit the appeal of the assessee.

3. From the aforesaid averments it is clear that the Ld. CIT(A) has passed an ex parte order even though the Ld. AR was present in his office on the last date of hearing i.e. on 29.06.2018. However, the Ld. CIT(A) has dismissed the appeal of assessee on erroneous premises that no one represented the assessee during the appellate proceedings. The aforesaid action of the Ld. CIT(A) is in violation of natural justice and, therefore, it has to be set aside and I do so and remand the matter back to the file of the Ld. CIT(A) for de novo adjudication of appeal and direct him to adjudicate on merits the appeal after hearing the assessee in accordance to law.

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

Order is pronounced in the open court on 6th December, 2019.

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

Dated :6<sup>th</sup> December, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – BCT Infrastructure LLP, 21A, Charu Chandra Avenue, Ground floor, Kolkata-700 033.
- 2 Respondent – ITO, Ward-28(1) , Kolkata.
3. CIT(A)-12, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar