

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

**BEFORE SHRI A.T. VARKEY, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.620/Kol/2019**

**(निर्धारणवर्ष / Assessment Year: 2008-09)**

|   |            |                                   |
|---|------------|-----------------------------------|
| <b>Sanjay Kumar Agarwala</b><br><b>C/o, Subash Agarwal &amp; Associates, Advocates, Siddha Gibson Lane, Suite 213, 2<sup>nd</sup> Floor, Kolkata-700069</b> | <b>Vs.</b> | <b>ITO, Ward-1(4), Jalpaiguri</b> |
| <b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AGFPA 9738 A</b>  |            |                                   |
| <b>(Appellant)</b>  | <b>..</b>  | <b>(Respondent)</b>               |

Appellant by : Shri Subash Agarwal, Advocate

Respondent by : Shri Supriyo Pal, JCIT, Sr. D.R.

सुनवाईकीतारीख/ Date of Hearing : 20/12/2019

घोषणाकीतारीख/Date of Pronouncement : 31/12/2019

**आदेश / ORDER**

**Dr. A.L. Saini, AM:**

The captioned appeal filed by the assessee, pertaining to assessment year 2008-09, is directed against the order passed by the Commissioner of Income Tax (Appeal)-Jalpaiguri, in appeal no. 89/Jal/CIT(A)/JAL/2013-14, which in turn arises out of penalty order passed by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 (in short the "Act") dated 28/03/2013.

2. At the outset itself, the ld counsel for the assessee submitted that the appeal was late by 100 days and requisite fee was not paid therefore, during the appellate stage the ld. CIT(A) dismissed the appeal of the assessee. The ld. Counsel prayed before the Bench that if an opportunity to plead his case before ld. CIT(A) is given to the assessee, he is ready to make compliances. Therefore, the ld. Counsel prayed the Bench that matter may be remitted back to the file of ld. CIT(A). The

ld. D.R. did not have objection if the matter is remitted back to the file of the ld. CIT(A).

3. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other material available on record. We note that the assessee filed the appeal before the ld. CIT(A), late by 100 days and assessee also did not pay the requisite filing fee therefore ld. CIT(A) dismissed the assessee's appeal. Before us, ld. Counsel submits that if one more opportunity is given to the assessee, he is ready to make compliance. Considering the facts and circumstances of the case, we are of the view that one more opportunity should be given to the assessee to plead his case before ld. CIT(A). 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 plead 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 with direction to condone the delay for filing appeal for 100 days 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 ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is allowed.

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

**Order pronounced in the Court on 31.12.2019**

**Sd/-**  
**(A.T. VARKEY)**  
**न्यायिकसदस्य / JUDICIAL MEMBER**

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

दिनांक/ Date: 31/12/2019  
(SB, Sr.PS)

Copy of the order forwarded to:

1. Sanjay Kumar Agarwala
2. ITO, Ward-1(4), Jalpaiguri
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