

IN THE INCOME TAX APPELLATE TRIBUNAL
GAUHATI 'E' COURT, AT KOLKATA

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

आयकरअपीलसं./ITA No.100/Gau/2019

(निर्धारणवर्ष / Assessment Year:2014-15)

Bharat Saikia Ward No. 5, P.O. Dhekiajuli, District – Sonitpur, Assam – 784110.	Vs.	ACIT, Tezpur
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BUWPS 1037 C		
(Assessee)	..	(Revenue)

Assessee by :None

Respondent by : Shri M.K. Dal, Addl. CIT, Sr. Dr

सुनवाईकीतारीख/ Date of Hearing : 08/06/2020

घोषणाकीतारीख/Date of Pronouncement : 17/06/2020

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the Assessee pertaining to assessment year 2014-15, is directed against the order passed by the Commissioner of Income Tax (Appeal)-1, Guwahati, which in turn arises out of an assessment order passed by the Assessing Officer u/s 147 of the Income Tax Act, 1961 (in short the 'Act') dated 05.12.2017.

2. Grounds of appeal raised by the Assessee are as follows:

“1. Because the Ld. CIT(A) erred in law in passing the order u/s 250 of the I.T. Act, 1961 without following the procedures, standards & formats for ensuring service transmission of electronic communication. Since the appellant did not receive any communication of fixation of hearings the Ld. CIT(A) also erred in facts in observing that the appellant either did not want to persecute the appeal or was already aware of the fate.

2. Because the Ld. CIT(A) was not justified in confirming the addition of Rs. 7,30,090/- as unexplained money u/s 69A of the I.T. Act, 1961 basing on

several decision only without giving any opportunity to explain the case depriving the assessee of natural justice.

3.The assessee craves leave and to act/alter any of the grounds of appeal before or at the time of hearing.”

3. We note that the main grievance of the assessee in ground No. 1 is that he did not receive the notice of hearing during the appellate proceedings from the Ld. CIT(A), therefore, he could not attend the hearing before the Ld. CIT(A). We note that the Hon'ble Supreme Court in M.S.Gill vs The Chief Election Commission 1978 AIR SC 851 held “The dichotomy between administrative and quasi-judicial function vis-à-vis the doctrine of natural justice is presumably obsolescent after Kraipak (A.K. Kraipak vs UOI AIR 1970 SC 150) which makes the water-shed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems and are not any new theology. They are manifested in the twin principles of *nemo judex in partesua* (no person shall be a judge in his own case) and *audialterem partem* (the right to be heard). It has been pointed out that the aim of natural justice is to secure justice”.

4. None appeared on behalf of the assessee. We have heard ld DR for the Revenue and we note that assessee has filed the appeal before ld. CIT(A) but he did not get opportunity of being heard; therefore it would be violation of principle of natural justice. Since the assessee did not receive any communication during the appellate proceedings about fixation of hearings therefore assessee could not attend the hearing before the ld CIT(A). We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. We note that ld DR for the Revenue has fairly agreed that this lis may be restored back to the file of ld CIT(A) for fresh adjudication.

Therefore, in the interest of justice, 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 pass a speaking order after affording sufficient opportunity of being heard to the

assessee, and to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order pronounced in the Court on 17 .06.2020

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

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

दिनांक/ Date:17/06/2020
(Biswajit, Sr.PS)

Copy of the order forwarded to:

1. Bharat Saikia.
2. ACIT, Tezpur.
3. C.I.T(A)-
4. C.I.T.- Guwahati
5. CIT(DR), Gauhati Bench, Guwahati.
6. Guard File.

True copy

By Order

Senior Private Secretary / DDO / H. O. O
ITAT, Gauhati Bench