

**IN THE INCOME TAX APPELLATE TRIBUNAL GUWAHATI BENCH, “E
COURT” AT KOLKATA**

(समक्ष) श्री ए. 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. 285/Gau/2019
Assessment Year:2015-16

Septy Pharmaceuticals P.Ltd. PAN: AALCS 0698C	Vs.	The DCIT, Cir-1, Guwahati
Appellant		Respondent
Date of Hearing		17.06.2020
Date of Pronouncement		24 .06.2020
For the Appellant		Shri J.P Gupta, FCA, ld. AR
For the Respondent		Shri T. Hmar, JCIT, ld. Sr. DR

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

This is an appeal preferred by the assessee against the order of Ld. CIT(Appeals), [in short, ld. CIT(A)], Guwahati-1, Guwahati dated 22-03-2019 for the AY 2015-16.

2. First grounds of appeal of assessee reads as under:-

“That the order passed by learned CIT(Appeals) is in gross violation of the principles of natural justice in as much as no proper and meaningful opportunity of being heard was given to the appellant as the appeal being dismissed for non prosecuting .”

3. The ld. AR of the assessee assailing the action of the ld. CIT(A) contended that though the assessee had filed adjournment application, the ld. CIT(A) has dismissed the appeal of assessee without going into the merits of the case. We note that the ld. CIT(A) has relied on the decision of the Hon’ble Supreme Court in the case of Ram Siromani Tripathi & Ors vs. State of U.P & Ors [Civil Appeal Nos. 9142-9144 of 2010 dt. 07-02-2019], wherein the Hon’ble Supreme Court was pleased to dismiss the Civil Appeals on the

ground that proxy-lawyer appearing for the advocate authorized by the litigant party sought adjournment on the ground that lawyer representing the litigant was out of station. It must be kept in mind that in the Hon'ble Supreme Court, the admission of SLP is discretionary and in the event the Hon'ble Supreme Court gives leave to appeal, then it is numbered as civil/criminal appeal and will be listed and heard on Tuesday to Thursday as per seniority or as directed by the court. The listing of Civil Appeal will be in the public domain by way of notice of advance listing of cases and the Advocate-on-record for the parties concerned will be very well aware of their respective appeals getting listed and they are duty bound to keep track of their appeals getting ripe for hearing. So sufficient notice of hearing is given to the parties and therefore, no laxity is entertained by the Hon'ble Supreme Court when the civil/criminal appeal is listed for final disposal and another reason is to defeat Bench hunting and as said earlier, the SLP admission itself is difficult and so when the leave is granted by the Apex Court and civil appeal is listed, the parties must be vigilant and serious to pursue the appeal, so the adjournment application listed for final hearing is not entertained for flimsy reason. Therefore decision of the Hon'ble Supreme Court which is taken by their Lordships cannot be imported while deciding the Statutory First Appeal of assessee before the Ld CIT(A) and that too without going into the merits of the case. It has been kept in mind that the assessee has a statutory right to file appeal at the first instance before the First appellate authority i. e. the ld. CIT(A) against the order of the AO. This vested right of assessee will be meaningless if the assessee/ld. AR is not given proper opportunity of hearing. In this case though the assessee has pleaded that his consultant could not appear before the AO and was seeking adjournment the ld. CIT(A) has dismissed the appeal, which action of the ld. CIT(A) cannot be countenanced. In this case, the assessee has not been able to present before the ld. CIT(A) and therefore, he (ld. CIT-A) passed/dismissed the appeal by an *ex parte* and thereby, principle of natural justice has been violated. Therefore, we set aside the impugned order of the ld. CIT(A) and direct him [the ld. CIT(A)]to adjudicate the appeal after giving proper opportunity of hearing to the assessee and the assessee is also directed to appear before him diligently and to file written submissions along with documents, if necessary as stated above. The ld. CIT(A) is to pass a

speaking order on merits as per law, after giving the assessee adequate opportunity of hearing.

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

Order is pronounced in the open court on 24 June, 2020.

Sd/-

(Dr. A. L. Saini)
Accountant Member

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated :24 June, 2020

**PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –M/s. Septy Pharmaceuticals Pvt. Limited, Kekanikuchi Septy, Dipteshwari Road, Moranjana, Rangia, Kamrup.
2. Respondent – DCIT,Cir-1, Guwahati
3. CIT
4. DR, ITAT, Guwahati.

/True Copy,

By order,

Senior Pvt. Secy.