

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

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

आयकरअपीलसं./ITA Nos.131 to 133/Gau/2019

(निर्धारणवर्ष / Assessment Years:2009-10, 2010-11 &2015-16)

Ispat Sheets Ltd. C/o Subash Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata- 700069	Vs.	ITO, Ward-4(2), Guwahati
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACI 4429 E		
(Appellant)	..	(Respondent)

Appellant by : Written Submission by Adv. Shri Subash Agarwal

Respondent by : Shri M. C. Omi Ningshen, Addl. CIT Sr. DR

सुनवाईकीतारीख/ **Date of Hearing** : **09/06/2020**

घोषणाकीतारीख/**Date of Pronouncement** : **17/07/2020**

आदेश / ORDER

Per Bench :

The captioned three appeals filed by the assessee, pertaining to assessment years 2009-10, 2010-11 and 2015-16 respectively, are directed against the separate orders passed by the Commissioner of Income Tax (Appeals)—2, Guwahati, in appeal nos. 589091201110117 and 376981201280118, which in turn arise out of separate assessment orders passed by the Assessing Officer u/s 147/143(3)/ 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. At the outset itself, we note that assessee company assailed the impugned order (vide grounds of appeals) by contending that the assessee could not represent his case before Ld. CIT(A) and the order being an ex-parte order, stood vitiated on

account of violation of principle of natural justice. At the time of hearing none appeared on behalf of the assessee. However, on behalf of the assessee written submissions were filed by Shri Subash Agarwal, Advocate, wherein it is stated that during the course of appellate proceedings, the assessee did not receive notices of hearings from the Id. CIT(A) therefore assessee could not plead his case before the Id CIT(A). It is also mentioned in the written submissions that assessee filed adjournment petitions in the e-proceedings portal of the Income Tax Department but Ld CIT(A) has passed an *ex Parte* order without giving adjournment to the assessee. It is contended in the said written submissions that in the interest of justice, another opportunity to contest the appeal before the Ld. first appellate authority may be granted to the assessee. The said written submissions are reproduced below for ready reference:

“1. In the instant three cases, ld. CIT(A) has passed an ex parte order. According to him, due and fair opportunity was given to the appellant by issuing various notices fixing the dates of hearing of appeal, but there was no appearance made by the appellant. According to him, as many as 4 hearings where fixed but in none of the dates fixed, the appellant made appearance before him.

2. It is submitted that out of the four days mentioned in the table drawn at page 1 and 2 of ld. CIT(A)'s order, on the first two occasions, that is, on 21.11.2017 and 08.10.2018, no appearance could be made because of the fact that the assessee never received any notice of hearing.

3. On the subsequent two occasions, that is, in respect of notices dated 31. 10. 2018 and 4.12. 2018 fixing the dates of hearing on 13.11.18 and 12. 12. 2018 respectively, the appellant had duly filed the adjournment petitions in the e-proceeding portal of the income tax department.

Adjournment petitions for A.Y: 2009-10 are placed in the paper book at page number 5 and page number 9. E-acknowledgement generated from the portal in relation to the two adjournment petitions are placed at page number 4 and 8 of the paper book respectively.

4. Similarly for the assessment year 2010-11, acknowledgements and the adjournment petitions are placed at page number 13-14 and page number 17-18 respectively.

5. Similarly for the assessment year 2015-16, acknowledgements and the adjournment petitions are placed at page number 22-23 and page number 26-27 respectively.

6. It is humbly submitted that in spite of submission of the adjournment petitions in the e-proceedings portal of the Income Tax Department, the Ld CIT(A) has passed an ex Parte order in gross denial of principles of natural justice.

7. In view of the above, it is prayed that in the interest of justice, all the three cases may please be sent back to the file of the ld. CIT(A). Otherwise your appellant would suffer irreparable loss and injury.

3. We have heard the ld. D.R. for the revenue and perused the material available on record. We note that during the appellate proceedings the assessee has participated in the appellate proceedings and sought adjournment through e-proceedings portal, however the ld CIT(A) did not grant adjournment which is against the principle of natural justice. We note that on two occasions, that is, on 21.11.2017 and 08.10.2018, the assessee never received any notice of hearing from ld CIT(A) therefore assessee could not plead his case before the ld CIT(A), hence it is a violation of principle of natural justice.

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 iudex in partesua* (no person shall be a judge in his own case) and *audi alterem partem* (the right to be heard). It has been pointed out that the aim of natural justice is to secure justice.

4. Therefore, considering the factual position narrated above, we are of the view that one more opportunity should be given to the assessee to plead his case before ld CIT(A). Learned DR did not have any objection if the matter is remitted back to the file of the ld CIT(A). Therefore, in the interest of justice, we deem it fit and proper to set aside the order of the ld. CIT(A) and restore the matter back to the file of Ld.CIT(A) for de novo adjudication and pass a speaking order, on merits, after affording sufficient opportunity of being heard to the assessee. For statistical purposes, these three appeals of the assessee are allowed.

5. In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Court on 17 .07.2020

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

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

दिनांक/ Date: 17/07/2020
(SB, Sr.PS)

Copy of the order forwarded to:

1. Ispat Sheets Ltd.
2. ITO, Ward-4(2), Guwahati
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