

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्षश्री ए.टी. वर्की, न्यायिक सदस्य एवं डॉ ए.एल. सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A.L. Saini, AM]

I.T.A. No. 117/Kol/2020
Assessment Year: 2011-12

Shri Vardhana Metaliks (P) Ltd. (PAN: AAICS3466M)	Vs.	Deputy Commissioner of Income-tax, Circle-3(1), Kolkata.
Applicant		Respondent
Date of Hearing		30.07.2020
Date of Pronouncement		31 .07.2020
For the Applicant		Shri H. V. Bhardwaj, Advocate
For the Respondent		Smt. Ranu Biswas, Addl. CIT

ORDER

Per Shri A. T. Varkey, JM:

This appeal filed by the assessee against the order of Ld. CIT(A)-12, Kolkata dated 14.10.2019 for AY 2011-12

2. At the outset, the Ld. Counsel for the assessee drew our attention to the fact that the impugned order of the Ld. CIT(A) is an ex parte order. According to him, on 12.10.2018 when the appeal was fixed for hearing for the first time the assessee had moved an adjournment application and thereafter, it can be noted from the impugned order that the second hearing was fixed on 27.08.2019 (approximately after one year) and the assessee did not receive notice of hearing fixed for 27.08.2014 and thereafter, could not appear on the last date of hearing which was fixed on 01.10.2019 and, therefore, the Ld. CIT(A) had dismissed the appeal without going into the merits of the case. Therefore, he prayed that the appeal may be restored back to the file of the Ld. CIT(A) for fresh adjudication on merits. The Ld. DR submitted that the assessee should have appeared before the Ld. CIT(A) and the law does not help the person who sleeps over the matter.

3. After hearing the rival submissions, we are of the opinion that assessee needs to be vigilant and by merely filing the appeal the assessee cannot expect the First Appellate Authority (Ld. CIT-A) to decide the grounds raised without any supporting

materials/documents and written submissions. We note that the ld. CIT(A) has noted that appeal was fixed for hearing on three dates and finding that neither any one appeared on behalf of assessee and no submission was ever filed, he dismissed the appeal preferred by the assessee. However, we note that though the ld. CIT(A) has stated to have fixed the appeals on several dates, however there is no mention about the service of notice/proof of service. So, we do not countenance the action of the ld. CIT(A) in ex parte dismissing the appeal. Since the ld. CIT(A) was expected to pass/adjudicate the grounds of appeal based on the records available and if necessary call for the assessment records, and then pass the order on merit. In the light of the above, we are of the opinion that since assessee's main grievance is that no proper opportunity has been given by the ld. CIT(A) to the assessee before passing the impugned order, we are of the opinion that there is violation of natural justice. Be that as it may, however, assessee is also expected to be vigilant and should pursue its appeal earnestly and diligently. We expect that after getting this order of the Tribunal the assessee would pursue the appeal diligently by filing written submissions as well as documents, if so advised, in support of the claim and be present either in person or through ld.AR and explain the facts and law in support of the grounds raised. In the light of above discussion, the impugned order of the ld. CIT(A) is set aside and the appeal of assessee is restored back to the file of Ld. CIT(A) with a direction to adjudicate the appeal on merits after hearing the assessee/going through the submissions/documents and ld. CIT(A) to pass a speaking order.

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

Order is pronounced in the open court on 31 July, 2020.

Sd/-
(Dr. A. L. Saini)
Accountant member

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

Dated : 31 July, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shree Vardhana Metaliks (P) Ltd., 8/53/1, Fern Road, 1st floor, Gariahat, Near GoalPark, Kolkata-700 029.
2. Respondent – DCIT, Circle-3(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