

IN THE INCOME TAX APPELLATE TRIBUNAL
GAUHATI 'E' COURT, ATKOLKATA

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

आयकरअपीलसं./ITA No.169/Gau/2019

(निर्धारणवर्ष / Assessment Year:2015-16)

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| Women's Economic Development Society | Vs. | ITO(Exemption), Ward-2(3), Guwahati |
| New Mandal Tilla, Hawakhana, Tura, West Garo Hills, Meghalaya-794001 | | |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAAAW 1726 G | | |
| (Appellant) | .. | (Respondent) |

Appellant by :Shri Uttam Kumar Thakur, Advocate
Respondent by :Shri M. K. Dal, Addl. CIT, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 11/06/2020

घोषणाकीतारीख/Date of Pronouncement : 31/07/2020

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the assessee, pertaining to assessment year 2015-16, is directed against the order passed by the Commissioner of Income Tax (Appeal)—2, Guwahati, in appeal no. 348662441281217/ 406, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 29/11/2017.

2. At the outset itself, Id. Counsel for the assessee submitted that assessee had mentioned his e-mail Id in Form No. 35, while filing appeal before the Id CIT(A). The Id CIT(A) was supposed to communicate to the assessee about the fixation of hearings before him by sending notices through e-mail address furnished by the assessee. However, during the appellate proceedings, assessee could not receive the notice of hearing by e-mail from Ld. CIT(A) therefore, the assessee could not plead his case before Id. CIT(A). Hence, Id Counsel prayed the Bench that one more opportunity should be given to the assessee to plead his case before Id. CIT(A). Ld. D.R. did not have any objection if the matter is remitted back to the file of Id. 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 Id CIT(A) and other material available on record. 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. We note that assessee has statutory right to file the appeal before the Id CIT(A) and he has right to be heard. Since the assessee could not receive the notice of hearing by e-mail from Ld. CIT(A) therefore, the assessee has not been heard by Id CIT(A), hence it is a violation of principle of natural justice. We note that it is

settled law that principles of natural justice and fair play require that the affected party should be granted sufficient opportunity of being heard to plead his case.

We note that Id CIT(A) did not consider the assessment records and did not adjudicate the various issues raised by the assessee on merits. 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 Id CIT(A).The Id. D.R. for the Revenue did not have any objection if the matter is remitted back to the file of Id. CIT(A). Therefore, in the interest of justice,we deem it fit and proper to set aside the order of the Id. CIT(A) and restore the matter back to the file ofLd.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, the appeal of the assessee is allowed.

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

Order pronounced in the Court on 31.07.2020

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

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

दिनांक/ Date: 31/07/2020
(SB, Sr.PS)

Copy of the order forwarded to:

1. Women's Economic Development Society
2. ITO(Exemption), Ward-2(3), Guwahati
3. C.I.T(A)-
4. C.I.T.- Guwahati.
5. CIT(DR), GauhatiBench, Guwahati.
6. Guard File.

True copy

By Order

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