

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. No. 161/Kol/2020
Assessment Year: 2012-13

Commercial House Pvt. Ltd. (PAN: AABCC2315G)	Vs.	Deputy Commissioner of In come-tax, Circle-6(1), Kolkata.
Appellant		Respondent

Date of Hearing (Virtual)	24.09.2020
Date of Pronouncement	30.09.2020
For the Appellant	N o n e
For the Respondent	Shri Jayanta Khanra, JCIT

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the assessee against the order of Ld. CIT(A)-7, Kolkata dated 22.10.2019 for A Y 2012-13.

2. None appeared for the assessee. However, we note that the ld. CIT(A) has passed an *ex parte* order and has not decided the grounds of appeal raised by the assessee and as required by sub-section (6) of section 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”). The ld. CIT(A) notes that the case was posted for hearing on 19.07.2019 and 21.10.2019 but none appeared and since there was non-compliance on behalf of assessee, he was of the opinion that the assessee was not interested in prosecuting this appeal. Hence, according to him, the appeal filed by the assessee was liable to be dismissed for non-prosecution and he dismissed the assessee’s appeal. We note that ground no. 1 of the assessee’s appeal is as under:

“1. For that in the facts & circumstances of the case the Ld. CIT(A) was unjustified in passing the order ex parte on the ground of non-compliance by the Appellant. In fact the Appellant filed an adjournment petition on 19.07.2019 which was not considered by him. Subsequently, on 29.10.2019 the AR of the Appellant called on him but the CIT(A) was unavailable. An affidavit to the effect is enclosed herewith.”

3. It should be kept in mind that if an assessee is aggrieved by the order of the AO, then it (assessee) has the statutory right to file an appeal before the Ld. CIT(A). This valuable/statutory right of the assessee cannot be lightly brushed aside. Having said so, we expect the assessee to be diligent while pursuing the appeal and the assessee has to file written submission, documents/materials in support of the claim. We note from the ground no.1 (supra) that assessee had filed an adjournment application on 19.07.2019 and on the next date of hearing on 29.10.2019, the Ld. AR of the assessee appeared at the office of the Ld. CIT(A) and since he was not available, had to return back without pursuing the appeal before the Ld CIT(A), which means that no fault could be attributed on the part of AR/assessee as alleged by the Ld. CIT(A). Therefore, the impugned order of the Ld. CIT(A) is erroneous for non-application of mind. In the light of above discussion, the impugned order of the Ld. CIT(A) is set aside and the appeal is restored back to him with direction to pass a speaking order by going through the statements of facts as well as oral/written submissions/documents, if any, filed by the assessee and in accordance to law. The assessee is directed to be diligent and either appear or/and file necessary papers before him, if advised to do so and the Ld. CIT(A) to decide the appeal in accordance to law.

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

Order is pronounced in the open court on 30th September, 2020.

Sd/-
(J. Sudhakar Reddy)
Accountant Member

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

Dated: 30th September, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Commercial House Pvt. Ltd., C-4, Gillander House , 8, N. S. Road, Kolkata-700 001.
- 2 Respondent – DCIT, Circle-6(1), Kolkata
3. The CIT(A) –7, Kolkata (sent through e-mail)
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)
/True Copy,

By order,

Assistant Registrar