

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)**

**ITA No. 1285/Kol/2018  
Assessment Year: 2012-13**

**Sai Commercial & Investment Pvt. Ltd.....Appellant**  
**C/o. Subash Agarwal & Associates**  
**Siddha Gibson**  
**1, Gibson Lane**  
**2<sup>nd</sup> Floor**  
**Suite-213**  
**Kolkata - 700 069**  
**[PAN : AAHCS 3343 Q]**

**Vs.**

**Income Tax Officer, Ward-3(2), Kolkata.....Respondent**

**Appearances by:**

*Shri Subash Agarwal, Advocate, appeared on behalf of the assessee.*

*Smt. Ranu Biswas, Addl. CIT D/R, appearing on behalf of the Revenue.*

Date of concluding the hearing : September 9<sup>th</sup>, 2020

Date of pronouncing the order : November 25<sup>th</sup>, 2020

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) – 1, (hereinafter the “Id.CIT(A)”), passed u/s. 250 of the Income Tax Act, 1961 (the ‘Act’), dt. 28/03/2018, for the Assessment Year 2012-13.

2. There is a delay of 8 (eight) days in filing of this appeal by the assessee. After perusing the petition for condonation of delay, we are convinced that the assessee was prevented by sufficient cause in filing the appeal in time. Hence, we condone the delay and admit this appeal.

3. After hearing rival contentions and perusing the orders of the lower authorities, we find that the assessee has not appeared before the Id. CIT(A) and hence an *ex-parte* order was passed dismissing the appeal of the assessee. We find that the Id. CIT(A) has not disposed off the case on merits. This is not permissible in law. We further find that the Assessing Officer has passed a best judgment assessment order u/s 144 of the Act. There is violation of principles of natural justice.

4. The Id. D/R, agreed with the submissions of the Id. Counsel for the assessee that the matter may be restored to the file of the Assessing Officer for fresh adjudication.

While agreeing that there were violations of principles of natural justice, he argued that a commitment be taken from the assessee that he would co-operate in the set aside proceedings before the Assessing Officer.

5. In view of the above submission made by both the parties, we restore this appeal to the file of the Assessing Officer for fresh adjudication in accordance with law. The Assessing Officer shall provide adequate opportunity to the assessee before passing the assessment order. The assessee shall appear before the Assessing Officer, take notice and thereafter co-operate in completion of the assessment proceedings.

6. In the result, appeal of the assessee is allowed for statistical purposes as directed above.

***Kolkata, the 25<sup>th</sup> day of November, 2020.***

*Sd/-*  
**[Aby T. Varkey]**  
 Judicial Member

Dated : 25.11.2020  
*{SC SPS}*

*Sd/-*  
**[J. Sudhakar Reddy]**  
 Accountant Member

*Copy of the order forwarded to:*

1. ***Sai Commercial & Investment Pvt. Ltd***  
***C/o. Subash Agarwal & Associates***  
***Siddha Gibson***  
***1, Gibson Lane***  
***2<sup>nd</sup> Floor***  
***Suite-213***  
***Kolkata – 700 069***

2. ***Income Tax Officer, Ward-3(2), Kolkata***

3. CIT(A)-  
 4. CIT- ,  
 5. CIT(DR), Kolkata Benches, Kolkata.

True copy  
 By order

Assistant Registrar  
 ITAT, Kolkata Benches



भारतकर अपीलिय अशिकरण  
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