

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "Virtual A Court" KOLKATA*

Before **Shri P.M. Jagtap, Vice-President** and
Shri S.S.Godara, Judicial Member

ITA No.2272/Kol/2019
Assessment Year:2015-16

Deo Prakash Pandey 12, Dey Street, Serampore, Dist. Hooghly-712203 [PAN No.AFOPP 9400 N]	बनाम/ V/s.	ACIT, Circle-23(1), Hooghly, Pin-712 101
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Shri Jayanta Khawra, JCIT-DR
सुनवाई की तारीख/Date of Hearing	07-12-2020
घोषणा की तारीख/Date of Pronouncement	14-12-2020

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2015-16 arises against the Commissioner of Income Tax (Appeals)-6, Kolkata's order dated 18.07.2019, passed in case No CIT(A), Kolkata-6/10254/2017-18 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Case called twice. None appears at the assessee's behest. It is accordingly proceeded *ex parte*.

2. For the reasons stated in the assessee's petition dated 18.10.2019 explaining his five days' delay to a communication gap with the auditor / counsel's office and lack of timely compilation of records, we condone the impugned delay as neither intentional nor deliberate but on account of circumstances beyond the assessee's control. The case is now taken up for adjudication on merits therefore.

3. With the able assistance of learned departmental representative, we notice at the outset that the CIT(A)'s lower appellate order confirming the Assessing Officer's

action making short term capital gains addition of ₹5,43,250/-neither framed any points of determination nor made the corresponding detailed adjudication contemplated u/s 250(6) of the Act. Learned departmental representative vehemently contended during the course of hearing that the CIT(A) had admittedly afforded sufficient opportunities of hearing to the taxpayer going by the *first para* of the lower appellate order.

4. We find no merit to sustain the Revenue's foregoing technical argument. We make it clear that there is no indication in the lower appellate order as to whether the assessee's or its counsel had actually been served the relevant notice(s) of hearing or not. Be that as it may, the clinching fact which has gone unrebutted from the Revenue side is that CIT(A)'s order under challenge has not adjudicated been merits of the sole issue (supra) raised at the assessee's behest. We therefore deem it appropriate to restore the assessee's instant *lis* back to the CIT(A) for his afresh adjudication as per law within three effective opportunities of hearing.

5. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in open court on 14/12/2020

Sd/-
(P.M.Jagtap)
(उपाध्यक्ष)

Vice President

*Dkp-Sr.PS

Sd/-
(S.S.Godara)
(न्यायिक सदस्य)
Judicial Member

दिनांक:- 14/12/2020 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Deo Prakash Pandey, 12, Dey Street, Serampore
Dist. Hooghly-712203
2. प्रत्यर्थी/Respondent-ACIT, Cir-23(1), Chinsurah, Hooghly-712101
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, कोलकाता ।