

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA

[Before Shri A. T. Varkey, JM & Shri Rajesh Kumar, AM]

I.T.A. No. 176/Kol/2020
Assessment Year: 2012-13

Bangabhumi Vanijya Pvt. Ltd. 63, Radha Bazar Street, 2 nd Floor, Kolkata-700 001.	Vs.	Income Tax Officer Ward-5(3), Kolkata, Kolkata.
(PAN: AAECB 8768 M)		
Appellant		Respondent

For the Appellant	Shri Manoj Kataruka
For the Respondent	Shri Gautam Patra, Addl. CIT

Date of Hearing	01.12.2021
Date of Pronouncement	15 .12.2021

ORDER

Per Shri A.T. Varkey, JM

This is an appeal preferred by the assessee against the order of Learned Commissioner of Income-tax (Appeals)-23, Kolkata [hereinafter referred to Ld. ‘CIT(A)’] dated 13.02.2017 for the Assessment Year (in short “AY”) 2012-13.

2. At the outset, the Ld. A/R, Shri Manoj Kataruka has pointed out that this is an *ex-parte* order passed by the Ld. CIT(A) without hearing the assessee. According to him, the Ld. CIT(A) has taken note that the appeal was fixed for hearing on 12.12.2016 and it was served upon the assessee himself (Shri Binod, M.No.-7890993975) who came to the office to collect the notice but did not appear for hearing and did not comply with the notice. According to the Ld. CIT(A), a fresh notice dated 19.12.2016 was issued for fresh hearing on 30.01.2017 and it was received by the same person who collected the notice and again did not appear for hearing. Therefore, the Ld. CIT(A) has passed an *ex-parte* order. However, Shri Manoj Kataruka submitted that the assessee does not know this so called Shri Binod

whom the Ld. CIT(A) is referring to. And that the assessee has no connection with Shri Binod. Therefore, according to the Ld. A/R, the assessee has not received any notice at all and therefore, could not represent itself before the Ld. CIT(A).

3. We note from the aforesaid discussion that the assessee has not received any notice. According to the Ld. CIT(A) the matter was fixed twice on 12.12.2016 & 30.01.2017 and the notices of hearing were handed over to Shri Binod who claimed to represent the assessee and collected the notices but did not appear before him on the dates fixed for hearing. According to the assessee there is no relationship with Shri Binod and he had no right to represent it and in this process the assessee did not get the copy of the notices and thereby did not get an opportunity to represent its case before the Ld. CIT(A). Be that as it may be, it is the statutory right of the assessee, if not satisfied with the order of the AO to prefer an appeal before the first appellate authority. And in this case, the Ld. CIT(A) did not pass the appellate order on merit after hearing the assessee. So in the facts & circumstances discussed (supra) we are inclined to set aside the impugned order of the Ld. CIT(A) and restore the appeal back to the file of the Ld. CIT(A). The Ld. A/R of the assessee undertakes to appear before the Ld. CIT(A) when the appeals are fixed for hearing and if advised may file, written submissions along with the documents to substantiate their grounds of appeal.

4. With the above observation, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 15 December, 2021.

Sd/-
(Rajesh Kumar)
Accountant Member

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

Dated: 15 December, 2021

Copy of the order forwarded to:

- 1 **Appellant** – Bangabhumi Vanijya Pvt. Ltd., 63, Radha Bazar Street, 2nd Floor, Kolkata-700 001.
- 2 **Respondent** – Income Tax Officer, Ward-5(3), Kolkata, Kolkata.
- 3 CIT(A) – 23, Kolkata. (sent through e-mail)
- 4 CIT –
- 5 DR, Kolkata Benches, Kolkata. (sent through e-mail)

True Copy,

By order

Senior Pvt. Secy./DDO/H.O.O.
ITAT, Kolkata Benches,
Kolkata