

| आयकर अपीलिय अधिकरण न्यायपीठ, गुवाहाटी।
IN THE INCOME TAX APPELLATE TRIBUNAL
"GUWAHATI" BENCH, GUWAHATI

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 158/GTY/2020
Assessment Year: 2016-17

Sanjay Kumar C/o Subash Agarwal & Associates, Advocates Siddha Gibson 1, Gibson Suite 213, 2 nd Floor Kolkata - 7000069 [PAN : AELPK7376Q]	Vs	ACIT, Circle-2, Begusarai
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Siddharth Agarwal, Advocate
Revenue by :	Shri N.T. Sherpa, JCIT

सुनवाई की तारीख/Date of Hearing : 10/01/2023
घोषणा की तारीख /Date of Pronouncement: 20/02/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the learned Commissioner of Income Tax (Appeals) - Guwahati-2, Guwahati, (hereinafter the "ld. CIT(A)") dt. 03/02/2020, passed u/s 250 of the Income Tax Act, 1961 ("the Act'), for Assessment Year 2016-17.

2. The Registry has pointed out that the appeal is time barred by 113 days. The assessee has filed petition for condonation of delay duly explaining the reasons for delay thereby. After going through the same, we are convinced that the assessee was prevented by sufficient cause from filing the appeal in time. In view of this, the delay is condoned and the appeal is admitted.

3. At the outset, the Ld. A/R of the assessee, Shri Siddharth Agarwal submitted that the Assessing Officer has passed a *best judgment assessment* u/s 144 of the Act without giving an opportunity to the assessee to file all the documents before the Assessing Officer to substantiate his claims. That, even the ld. CIT(A) has dismissed the appeal of the assessee without admitting the additional evidences submitted, which is in violation of Rule 46A. He prayed that the assessee's case may be remitted back to the file of the Assessing Officer for reassessment.

3.1. The ld. D/R, though not leaving his grounds, raised no objections to the plea of the assessee.

4. We find force in the submissions of the Ld. A/R in the background of the discussions (*supra*) and taking note of the decision of the Hon'ble Supreme Court in the case of *Tin Box Company vs Commissioner Of Income-Tax [2001] 249 ITR 216 (SC)*, we are inclined to accede to the plea of the assessee. The Hon'ble Supreme Court in the case of *Tin Box Company (Supra)* held as under:-

"2. That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of selling out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.

3. Two questions were placed before the High Court, of which the second question is not pressed. The first question reads thus :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee ?"

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4. *In our opinion, there can only be one answer to this question which is inherent in the question itself: in the negative and in favour of the assessee.*

5. *The appeals are allowed. The order under challenge is set aside. The assessment order, that of the Commissioner (Appeals) and of the Tribunal are also set aside. The matter shall now be remanded to the assessing authority for fresh consideration, as aforesaid. No order as to costs.*

5. In light of the aforesaid facts discussed, I am inclined to set aside the impugned order of the Ld. CIT(A) and remand the issue back to the file of the Assessing Officer for *de novo* assessment. The assessee is at liberty to raise all the issues before the Assessing Officer. The assessee is directed to be diligent and file all the documents to substantiate its claim before the Assessing Officer. With the aforesaid observations, the appeal of the assessee is allowed for statistical purposes

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

Order pronounced in the Court on 20th February, 2023 at Guwahati.

Sd/-

**(RAJPAL YADAV)
VICE-PRESIDENT**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 20/02/2023

**SC S/P*

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आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, गुवाहाटी /DR,ITAT, Guwahati,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Guwahati