

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री राजेश कुमार, लेखा सदस्य
के समक्ष

Before

**SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**I.T.A. No.: 1098/KOL/2023
Assessment Year: 2016-17**

***Kaybee Natural Resources Pvt. Ltd.....Appellant
[PAN: AACCK 2188 G]***

Vs.

ITO, Ward-15(2), Kolkata.....Respondent

Appearances:

Assessee represented by – Sh. Anil Kochar, Adv.

Department represented by – Sh. B.K. Singh, JCIT, Sr. D/R.

Date of concluding the hearing : January 1st, 2024

Date of pronouncing the order : January 2nd, 2024

ORDER

Per Rajesh Kumar, Accountant Member:

This appeal preferred by the assessee is against the order passed by Learned Commissioner of Income-tax (Appeals)-NFAC, Delhi [hereinafter referred to Ld. 'CIT(A)'] dated 30.09.2023 for the Assessment Year (in short 'AY') 2016-17.

2. At the outset, ld. Counsel for the assessee stated that the appeal was decided *ex-parte* by ld. CIT(A) without deciding the issues on merit. Ld. A/R drew the attention of the Bench to para 3 of the appellate order wherein ld. CIT(A) has narrated five occasions when the notices were issued by e-mail however, the assessee have not responded to the said notices. Ld. A/R stated that though the assessee could not respond to these notices dated 4.12.2019, 23.01.2020, 04.02.2020, 12.01.2021 and 14.09.2023. Ld. A/R stated that ld. CIT(A) has issued one more notice giving final opportunity dated 25.09.2023 fixing the date to reply on 29.09.2023 before which the assessee applied for adjournment for 15 days and to prove its contention, the Ld. A/R filed an e-proceedings response acknowledgment dated 25.09.2023 wherein the assessee has requested for adjournment praying for 15 days' time to furnish the reply. However, the same was not considered by ld. CIT(A) and the issue was decided *ex-parte*. Ld. A/R prayed before the Bench that since the appellate order has been passed *ex-parte* behind the back of the assessee without disposing off the appeal on merit, it would be in the interest of justice and fair play if the assessee is given one more opportunity to present its case.

3. Ld. D/R on the other hand, left the issue to the wisdom of the Bench.

4. After hearing the rival contentions and perusing the material on record, we find that though the assessee could not respond on the first five dates fixed by ld. CIT(A) however, the assessee has applied for adjournment of 15 days when a final opportunity was given vide notice dated 25.09.2023 which did not meet the approval

of the first appellate authority and the appeal was decided *ex-parte* without deciding the same on merit. In our opinion, the order passed by Id. CIT(A) is in violation of the provisions of Section 250(6) of the Act which provides that the appellate authority shall state in writing and state the point of determination and decision thereon with reasons for the said decision. However, we note that Id. CIT(A) has passed a cryptic order without discussing the issue on merit. Accordingly, we are of the view that in the interest of justice and fair play the assessee needs to be given one more opportunity to present its case on merit before the first appellate authority. Accordingly, we restore the issue to the file of Id. CIT(A) with a direction to decide the same on merit allowing reasonable opportunity to the assessee to file its reply.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Kolkata, the 2nd January, 2024.

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Rajesh Kumar]
Accountant Member

Dated: 02.01.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Kaybee Natural Resources Pvt. Ltd., G3-43A/A, New Budge Budge Trunk Road, Mahadevpur, Maheshtala, Kolkata-700 141.**
- 2. ITO, Ward-15(2), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata