

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 612/Kol/2023**  
**Assessment Year: 2014-15**

Manush Commodities Pvt. Ltd.  (PAN: AAFCM 9486 J)	Vs.	ITO, Ward-15(3), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	22.02.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	03.06.2024
For the Appellant/ निर्धारिती की ओर से	Shri Yogesh Kumar Sharma, A.R
For the Respondent/ राजस्व की ओर से	Shri Abhijit Kundu, CITDR

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 24.04.2023 for the AY 2014-15.

2. At the outset the Ld. Counsel for the assessee submitted that the assessment as well as the appellate order was framed ex-parte as the assessee could not appear before the authorities below. The assessee has filed certain additional evidences like

bank statements, balance sheet, audited accounts, Form 23AC for AY 2012-13 before the Id. CIT(A) however the same were not admitted and taken into account by the Ld. CIT(A). The Ld. A.R therefore prayed that in the interest of justice and fair play, the case of the assessee may be restored to the file of AO for re-adjudication on merit after taking into account the contentions of the assessee on merit.

3. The Ld. D.R on the other hand strongly objected to the arguments put forward by the Ld. A.R and submitted that despite several opportunities the assessee has failed to appear and finally the case of the assessee was decided ex-parte before the AO as well as the Ld. CIT(A). The Ld. D.R however left the issue to the wisdom of the Bench.

4. After hearing the rival contentions and perusing the material on record, we find that undisputedly both the authorities below have decided the case ex-parte. So much so the Ld. CIT(A) has not admitted the additional evidences has filed by the assessee under Rule 46A of the Income Tax Rules comprising bank statement, balance sheet, audited account, auditors report etc. In our opinion, no one should be condemned unheard. In our considered view the assessee needs to be given one more opportunity to present its case on merit before the AO so that the principles of natural justice are satisfied. The case of the assessee finds support from the decision of Hon'ble Supreme Court in the case of Mst. Katiji & Ors. reported in (1987) 2 SCC 107 (SC) wherein the Hon'ble Apex Court has held that the substantial justice should prevail over technicalities. In view of the above, we are inclined to restore the issue to the file of AO with the direction to decide the same after taking into account contentions and evidences which the assessee may file. Simultaneously we direct the assessee to cooperate in the assessment proceedings failing which an adverse view could be taken.

5. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 6<sup>th</sup> June, 2024

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 6<sup>th</sup> June, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Manush Commodities pvt. Ltd. 61, Dhananjay Bhatt Acharjee Sarani, Ghospara, Bally, Howrah-711227
2. Respondent – ITO, Ward-15(3), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata