

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

**I.T.A. No. 582/Kol/2024**  
**Assessment Year: 2020-21**

<b>Samar Biri Factory</b> Aurobindopally Siliguri - 734006 <b>[PAN : AAOFS7941N]</b>	Vs	<b>Assessing officer, Assessment Unit</b>
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sujit Basu & Rajib Mukherjee, Advocate
Revenue by :	Shri G. Ajay Robin Singh, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 12/06/2024  
घोषणा की तारीख /Date of Pronouncement: 24/06/2024

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, (hereinafter the "Id. CIT(A)") dt. 19/02/2024, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for Assessment Year 2020-21.

2. Though the assessee has raised various grounds of appeal but the main contention of the assessee is that on account of the death of the key person of the assessee firm, no one could appear before the Id. Assessing Officer and, thereafter when the appeal was filed before the Id. CIT(A), the same was dismissed on account of delay in filing the appeal. It was prayed that since high pitched assessment has been made in the case of assessee by the Id. Assessing Officer and assessee had no opportunity to furnish the details, the issues on merits may be restored to the file of the Id. Assessing Officer for *de novo* adjudication.

On the other hand, the Id. D/R, though supported the order of the lower authorities, was fair enough not to oppose the request of remitting the matter back to the file of the Id. Assessing Officer.

3. We have heard rival contentions and perused the material placed before us. We notice that the assessee is a partnership firm engaged in manufacturing of biri. Income of Rs.40,21,640/- declared for Assessment Year 2020-21 furnished on 15/02/2021. Case selected for completed scrutiny. The Id. Counsel for the assessee stated that after the notice of scrutiny u/s 143(2) and 142(1) of the Act being served on the assessee firm, key partner of the appellant firm, Shri Samar Saha, who used to look after the tax and accounts matter died on 13/02/2022. In between due to Covid restrictions, no appearance could be made and after the death of the partner again compliance could not be made. We further note that the additions made by the Id. Assessing Officer are firstly unexplained expenditure u/s 69C of the Act for the difference in closing balance of the sundry creditors for the current year and preceding year and secondly disallowance u/s 36(1)(va) of the Act have delay in deposit of employer's contribution towards PF & ESI.

4. The Id. Counsel for the assessee has stated that since no financial statement of preceding year and current year were filed, the Id. Assessing Officer has made the addition and had there been any opportunity, the same could have been explained. As far as the disallowance u/s 36(1)(va) of the Act is concerned, he submitted that the alleged sum is on account of employer's contribution and not employees' contribution and the same was deposited before the due date of furnishing return of income u/s 139(1) of the Act and,

therefore, disallowance u/s 43B of the Act is uncalled for. We, however, note that due to minor delay in filing the appeal before the Id. CIT(A), the appeal of the assessee has been dismissed and Id. CIT(A) has not made any finding on the merits of the case. Considering the facts of the case, in the interest of justice and being fair to both the parties, we are inclined to restore the matter back to the file of the Id. Assessing Officer for *de novo* adjudication, in accordance with law. Needless to mention that, the assessee should remain compliant to the notice of hearing and shall not take adjournment and should appear on the very first date of hearing unless otherwise for a *bonafide* cause and furnish the details in support of its grounds. Ld. Assessing Officer should ensure that the assessee is provided with reasonable opportunity of being heard.

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

**Order pronounced in the Court on 24<sup>th</sup> June, 2024 at Kolkata.**

*Sd/-*

**(SONJOY SARMA)  
JUDICIAL MEMBER**

*Sd/-*

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

Kolkata, Dated 24/06/2024

*Sd/-*

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

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

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata