

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Sanjay Garg, Judicial Member
&
Shri Rakesh Mishra, Accountant Member**

**I.T.A. No. 928/KOL/2023
Assessment Year: 2015-2016**

***Maynagori C.S. Shop,.....Appellant
Thana Road, Maynaguri,
Jalpaiguri-735224,
West Bengal
[PAN: AAOFM3110D]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Circle-1(1), Jalpaiguri,
C.R. Building, Race Course Road,
Naya Basti, Jalpaiguri-735101,
West Bengal***

-A N D-

**I.T.A. No. 1152/KOL/2024
Assessment Year: 2015-2016**

***Maynagori C.S. Shop,.....Appellant
Thana Road, Maynaguri,
Jalpaiguri-735224,
West Bengal
[PAN: AAOFM3110D]***

-Vs.-

***Commissioner of Income Tax (Appeals),.....Respondent
Income Tax Department,
National Faceless Appeal Centre,
Delhi***

Appearances by:

*Shri R.K. Saha, A.R., appeared on behalf of the assessee
Shri A. Kundu, CIT (DR), appeared on behalf of the
Revenue*

Date of concluding the hearing : December 03, 2024
Date of pronouncing the order : December 04, 2024

O R D E R

Per Sanjay Garg, Judicial Member:-

The captioned appeals by the assessee are directed against the orders of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 22.06.2023 and 18.04.2024 respectively passed for A.Y. 2015-16.

2. First we take up the assessee's appeal in **ITA No. 928/KOL/2023**.

3. The appeal is time barred by 14 days. Separate application for condonation of delay has been filed. Considering the submission made in the application, we condone the delay of 14 days and admit the appeal.

4. At the outset, Id. Counsel for the assessee has invited our attention to the assessment order to show that the same is an *ex-parte*/best judgment assessment order. Id. Counsel for the assessee has further invited our attention to the impugned order of Id. CIT(Appeals) to show that the said order of Id. CIT(Appeals) is also an *ex-parte* order. An affidavit of one Shri Soumendra Sengupta has been placed on file, wherein he has deposed that he is one of the partners of the assessee-firm and 80 years old person and has been looking after the business of the partnership firm. It

has been further deposed that he could not attend the hearing before the ld. Assessing Officer due to his illness as he was at Hyderabad for his treatment. It has been further deposed that he could not reply to the notices issued by the ld. CIT(Appeals) as he was not aware of the online procedure and was unable to cope up with the system resulting into the aforesaid *ex-parte* order of the ld. CIT(Appeals). The ld. Counsel, therefore, submitted that in the interest of justice, the assessee may be given an opportunity to present its case before the ld. Assessing Officer.

5. Considering the rival submissions, we are of the view that interest of justice will be served if the aforesaid matter is restored to the file of ld. Assessing Officer for *denovo* assessment. We order accordingly. The impugned order of the ld. CIT(Appeals) is, therefore, set aside and the matter is restored to the file of ld. Assessing Officer for *denovo* assessment.

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

7. Now we take up the appeal in **ITA No. 1152/KOL/2024.**

8. In this appeal, the assessee has contested the levy of penalty under section 271(1)(c) of the Income Tax Act, which has been imposed by the ld. Assessing Officer in relation to the quantum addition, as contested by the assessee in ITA No. 928/KOL/2023.

9. In view of our discussion made above while adjudicating ITA No. 928/KOL/2023, since we have set aside the impugned order of ld. CIT(Appeals) and restored the matter to the file of ld. Assessing Officer in relation to quantum addition, therefore, the impugned penalty in this appeal has no legs to stand. The same is accordingly set aside. However, it is made clear that in the *denovo* assessment proceedings/order, if the ld. Assessing Officer will be of the view that it is a fit case for initiation/levy of penalty proceedings under section 271(1)(c) of the Income Tax Act, he will be at liberty to do so.

10. With the above observations, this appeal of the assessee is treated as allowed.

11. In the result, to sum up, both the appeals of the assessee are treated as allowed as indicated above.

Order pronounced in the open Court on 04/12/2024.

Sd/-
(Rakesh Mishra)
Accountant Member

Sd/-
(Sanjay Garg)
Judicial Member

Kolkata, the 4th day of December, 2024

*Copies to :(1) Maynagori C.S. Shop,
Thana Road, Maynaguri,
Jalpaiguri-735224, West Bengal*

- (2) *Deputy Commissioner of Income Tax,
Circle-1(1), Jalpaiguri,
C.R. Building, Race Course Road,
Naya Basti, Jalpaiguri-735101, West Bengal*
- (3) *Commissioner of Income Tax (Appeals),
Income Tax Department,
National Faceless Appeal Centre, Delhi*
- (4) *Commissioner of Income Tax- , Kolkata;*
- (5) *The Departmental Representative*
- (6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.