

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

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 2202 /KOL/ 2014
Assessment Year: 2009-2010**

Shri Surendra Kumar Agarwal,.....Appellant
C/o. Prop.: M/s. JBS Tube (India),
122, J.N. Mukherjee Road, Plot No. 115,
Ghusuri,
Howrah-711 107
[PAN : ADCPA 8603 L]

-Vs.-

Income Tax Officer,.....Respondent
Ward-46(4), Kolkata,
3, Government Place (West),
Kolkata-700 001

Appearances by:

Shri Subash Agarwal, Advocate, for the assessee
Shri Pinaki Mukherjee, JCIT, D.R., for the Department

Date of concluding the hearing : June 13, 2016

Date of pronouncing the order : August 10, 2016

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-XXX, Kolkata dated 26.09.2014 passed ex parte dismissing the appeal of the assessee.

2. The assessee in the present case is an individual, who is engaged in the business of trading in iron and steel in the name and style of his proprietary concern M/s. JBS Tubes. The return of income for the year under consideration was filed by him on 24.09.2009 declaring total income at Rs.6,29,860/-. In the assessment completed under section 143(3) vide an order dated 27.12.2011, the total income of the assessee was determined by the Assessing Officer at Rs.27,57,355/- after making certain additions/disallowances.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and since there was no compliance on the part of the assessee to the notices issued by him fixing the appeal of the assessee for hearing from time to time, the Id. CIT(Appeals) disposed of the same vide his appellate order dated 26.09.2014 passed ex parte confirming most of the additions made by the Assessing Officer. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. Before us, the assessee has filed an affidavit dated 09.06.2016 explaining the non-compliance before the Id. CIT(Appeals) as under:-

"(1) That I had filed an appeal before the Commissioner of Income Tax (Appeals) being aggrieved with the assessment order dated 27.12.2011.

(2) That the said appeal was dismissed by the Id. CIT(A) by passing an ex parte order due to non-appearance of anyone on my behalf before him.

(3) That Shri Vivek Jaiswal, CA, having his office at 2A, Ganesh Chandra Avenue, Commerce House, Kolkata-700 013 was engaged in the instant matter to appear before the Id. CIT(A) and I was under the bonafide belief that proper compliances were made from the end of Shri Vivek Jaiswal, CA.

(4) That after receipt of the order of the Id. CIT(A), it had come to my knowledge that no compliance was made by Shri Vivek Jaiswal, CA.

(5) That I give an undertaking that I shall make due compliance in case the abovementioned case is sent back to the file of the Id. CIT(A).

(6) That the facts stated in para 1 and 4 are true to the best of my knowledge and belief and paragraph 5 is an undertaking given by me".

Keeping in view the averments made by the assessee in the affidavit as above, I am satisfied that there was a sufficient cause for the non-appearance on behalf of the assessee before the Id. CIT(Appals) when his appeal was fixed for hearing from time of time. I, therefore, set aside the impugned order passed by the Id. CIT(Appeals) dismissing the appeal of the assessee ex parte and remit the matter back to him for deciding the appeal of the assessee afresh on merit after giving one more opportunity of being heard to the assessee. As undertaken in the affidavit filed before me, the assessee shall make due compliance and extend all the possible cooperation to the Id. CIT(Appeals) in order to enable him to dispose of the appeal expeditiously.

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

Order pronounced in the open Court on August 10, 2016.

Sd/-

**(P.M. Jagtap)
Accountant Member**

Kolkata, the 10th day of August, 2016

- Copies to :
- (1) **Shri Surendra Kumar Agarwal,
C/o. Prop.: M/s. JBS Tube (India),
122, J.N. Mukherjee Road, Plot No. 115,
Ghusuri,
Howrah-711 107**
 - (2) **Income Tax Officer,
Ward-46(4), Kolkata,
3, Government Place (West),
Kolkata-700 001**
 - (3) **Commissioner of Income Tax (Appeals)-XXX, Kolkata;**
 - (4) **Commissioner of Income Tax- ,**
 - (5) **The Departmental Representative**
 - (6) **Guard File**

By order

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