

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

**Before Shri P.M. Jagtap, Accountant Member**

**I.T.A. No. 1066 /KOL/ 2015  
Assessment Year: 2009-2010**

**Smt. Pratima Sarkar,.....Appellant**  
**Prop. of M/s. Ganesh Fuel,**  
**C/o. Ramtanu Bhawan,**  
**Near New Town,**  
**Coochbehar**  
**[PAN : AVHPS 5548 K]**

**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-2, Coochbehar,**  
**Debibari Road,**  
**P.O. Dist. Coochbehar-736 101**

**Appearances by:**

*Shri Pinaki Lal Choudhury, Advocate, for the assessee*  
*Shri Prabal Choudhury, JCIT, Sr. D.R., for the Department*

Date of concluding the hearing : April 29, 2016

Date of pronouncing the order : June 03, 2016

**O R D E R**

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals), Jalpaiguri dated 12.09.2014 for the assessment year 2009-10.

2. At the outset, it is noted that there is a delay of 226 days on the part of the assessee in filing this appeal before the Tribunal. In this regard, the assessee has filed an application seeking condonation of the said delay and keeping in view the reasons given therein, which are fully supported by a documentary evidence in the form of medical certificate, I am of the view that the delay on the part of the assessee in filing this appeal before the Tribunal is for a sufficient cause. The said delay is, therefore, condoned and this appeal of the assessee is being disposed of on merit.

3. The assessee in the present case is an individual, who is engaged in the business of running a retail outlet of diesel, petrol and lubricants under licence from Indian Oil Corporation. The return of income for the year under consideration was filed by her on 29.09.2009 declaring total income of Rs.1,758/-. In the assessment completed under section 143(3) vide an order dated 30.12.2011, the total income of the assessee was determined by the Assessing Officer at Rs.9,34,641/- after making the following three additions:-

(1)	Under-valuation of closing stock for 4KL petrol	Rs.2,04,017/-
(2)	Reduction of 316 litres of extra-premium petrol from stock	Rs.17,306/-
(3)	Disallowance under section 40(a)(ia) on account of expenditure incurred on construction of building and pump area	Rs.8,11,560/-

4. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), written submission was filed by the assessee in support of her case on the issues involved in the appeal. The said written submission was forwarded by the Id. CIT(Appeals) to the Assessing Officer for the later's comments. In the remand report submitted to the Id. CIT(Appeals), the Assessing Officer offered his comments on the written submission filed by the assessee. A copy of the remand report was provided by the Id. CIT(Appeals) to the assessee and the case was fixed for hearing twice to give the assessee an opportunity of filing her rejoinder. The assessee, however, not availed the said opportunity and keeping in view the same, the Id. CIT(Appeals) proceeded to dispose of the appeal of the assessee by recording his conclusion as under:-

*"In view of these facts, it is seen that the assessee does not have any argument in support of the grounds of appeal taken. The appeal of the assessee is dismissed".*

Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

5. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the assessee in support of her case on the issues involved in the appeal had filed written submission before the Id. CIT(Appeals) and the same was forwarded by the Id. CIT(Appeals) to the Assessing Officer for his comments. The Assessing Officer also offered his comments in the remand report submitted to the Id. CIT(Appeals) and since the assessee did not file any rejoinder to the copy of remand report submitted by the Assessing Officer, which was made available to her, the Id. CIT(Appeals) proceeded to dismiss the appeal of the assessee by observing that the assessee did not have any argument in support of the grounds of appeal taken. He, however, appears to have ignored the fact that the submission in writing was already filed by the assessee in support of the grounds taken in her appeal and even the remand report sought thereon from the Assessing Officer was available on record before the Id. CIT(Appeals). He did not take the same into consideration and proceeded to dismiss the appeal of the assessee for want of rejoinder filed by the assessee to the remand report submitted by the Assessing Officer. As per the provisions of sub-section (6) of section 250, it is incumbent upon the Id. CIT(Appeals) to dispose of the appeal filed by the assessee by an order in writing stating the points for determination, the decision thereon and the reasons for the decision. In my opinion, the impugned order passed by the Id. CIT(Appeals) is not in accordance with the relevant provisions of section 250(6), inasmuch as, the same does not state the points for determination, the decision thereon and the reasons for the decision in spite of the fact that written submission filed by the assessee on such points as well as the comments offered by the Assessing Officer by way of remand report thereon were available on record before him. I, therefore, set aside the said order and remit the matter back to the Id. CIT(Appeals) with a direction to dispose of the appeal of the assessee afresh on merit in

accordance with law by passing a well discussed and well reasoned order after giving the assessee sufficient opportunity of being heard.

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

Order pronounced in the open Court on June 03, 2016.

**Sd/-  
(P.M. Jagtap)  
Accountant Member**

**Kolkata, the 3<sup>rd</sup> day of June, 2016**

- Copies to :
- (1) **Smt. Pratima Sarkar,  
Prop. of M/s. Ganesh Fuel,  
C/o. Ramtanu Bhawan,  
Near New Town,  
Coochbehar**
  - (2) **Income Tax Officer,  
Ward-2, Coochbehar,  
Debibari Road,  
P.O. Dist. Coochbehar-736 101**
  - (3) **Commissioner of Income Tax (Appeals), Jalpaiguri**
  - (4) **Commissioner of Income Tax- ,**
  - (5) **The Departmental Representative**
  - (6) **Guard File**

*By order*

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

**Laha/Sr. P.S.**