

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'SMC' BENCH, KOLKATA****Before Shri P.M. Jagtap, Accountant Member****I.T.A. No. 1880/KOL./2017
Assessment year: 2011-2012****Uttam Kumar Mishra,.....Appellant
Baksara Bagdipara,
Jagacha Sadar,
Howrah-711 111
[PAN: ASAPM 4994 R]****-Vs.-****Income Tax Officer,.....Respondent
Ward-46(2), Kolkata****Appearances by:***Shri P.J. Bhide, FCA, for the assessee**Shri Satyajit Mondal, Addl. CIT, D.R., for the Department*

Date of concluding the hearing : November 30, 2017

Date of pronouncing the order : November 30, 2017

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-14, Kolkata dated 30.06.2017 dismissing the appeal of the assessee *ex parte*.

2. The assessee in the present case is an individual, who is engaged in the business of dealing in iron and steel. The return of income for the year under consideration was filed by him on 02.05.2012 declaring total income of Rs.2,39,940/-. In the assessment completed under section 143(3) vide an order dated 22.03.2014, the total income of the assessee was determined by the Assessing Officer at Rs.23,12,012/- after making trading addition on estimated basis.

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 said appeal for hearing on 05.04.2017, 20.04.2017, 05.05.2017 and 07.06.2017, the Id. CIT(Appeals) dismissed the same by his appellate order dated 30.06.2017 passed *ex parte*. Aggrieved by the same, 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. In Grounds No. 1 & 2, the assessee has raised a preliminary issue challenging the impugned order passed by the Id. CIT(Appeals) *ex parte* on the ground that proper, sufficient and effective opportunity was not allowed by the Id. CIT(Appeals) before dismissing the appeal *ex parte*. In this regard, an affidavit has been filed by the assessee explaining the reasons for the non-compliance before the Id. CIT(Appeals) as under:-

"AFFIDAVIT

I, UTTAM KUMAR MISHRA, son of Late Shyam Bihari Mishra, aged about 44 years, residing at Baksara, Bagdipara, Jagacha Sadar, Howrah-711111, carrying on Proprietary Business under the name and style of M/s. Puja & Duja Company at 100, M.N. Saha Road, Dum Dum, Kolkata, do hereby solemnly affirm and state as follows:

1. That I am carrying on Proprietary Business under the name and style of M/s. Puja & Duja Company at 100, M.N. Saha Road, Dum Dum, Kolkata;

2. That I am assessed to Tax under PAN ASAPM4994R by the Income Tax Officer, Ward-46(2), Kolkata;

3. That being aggrieved by the Assessment Order passed by the said Income Tax Officer in my case on 22.03.2014 for the Assessment Year 2011-12, I preferred an Appeal to the Commissioner of Income-tax (Appeals)-XXX, Calcutta, which was later transferred to the Commissioner of Income-tax (Appeals)-14, Kolkata (hereinafter referred to as 'CIT(A)-14, Kolkata').

4. That except the Notice, fixing the date for hearing of the Appeal on 05.05.2017, I did not receive any other intimation or Notice, fixing the hearing of the Appeal on any other date.

5. That on 05.05.2017, my Authorized Representative submitted a Petition to the CIT(A)-14, Calcutta, requesting for an adjournment of the hearing of my above Appeal. A photocopy thereof is attached herewith.

6. *That on or about 21.07.2017, I received a copy of the Order, passed by the CIT(A)-14, Kolkata, on my above Appeal, deciding the same Ex-parte.*

7. *That on perusal of the copy of the said Order, I find that the Appeal was purportedly fixed for hearing on 05.04.2017, 20.04.2017 and 07.06.2017. Notices, if any, issued by the Office of the CIT(A)-14, Kolkata, fixing the above three dates for hearing, were not at all received by me.*

8. *That therefore, I could not cause any representation on 07.06.2017.*

9. *That what has been stated above, is true to the best of my knowledge and belief.*

Place: Kolkata.

*(Uttam Kumar Mishra)
Deponent"*

Date: 29.11.2017

Keeping in view the assertion made on behalf of the assessee on oath in the affidavit filed before me, I am satisfied that there was a sufficient cause for non-appearance on the part of the assessee before the Id. CIT(Appeals) when its appeal was fixed for hearing on 05.04.2017, 20.04.2017, 05.05.2017 and 07.06.2017. I, therefore, set aside the impugned order passed by the Id. CIT(Appeals) *ex parte* and remit the matter back to him for disposing of the appeal of the assessee afresh on merit after giving proper and sufficient opportunity to the assessee of being heard. As undertaken by the Id. counsel for the assessee, the assessee shall make due compliance before the Id. CIT(Appeals) and extend all possible cooperation in order to enable the Id. CIT(Appeals) 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 30th day of November, 2017.

**Sd/-
(P.M. Jagtap)
Accountant Member
Kolkata, the 30th day of November, 2017**

- Copies to :
- (1) **Shri Uttam Kumar Mishra,
Baksara Bagdipara,
Jagacha Sadar,
Howrah-711 111**
 - 2) **Income Tax Officer,
Ward-46(2), Kolkata**
 - (3) *CIT(Appeals)-14, Kolkata*
 - (4) *CIT- , Kolkata;*
 - (5) *The Departmental Representative*
 - (6) *Guard File*
- TRUE COPY**

By Order

*Senior Private Secretary,
Head of Office/DDO,
Income Tax Appellate Tribunal
Kolkata Benches, Kolkata*

Laha/Sr. P.S.