

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

[Before Shri P.M. Jagtap, AM & Shri S.S. Viswanethra Ravi, JM]

I.T.A. No. 343/Kol/2016

Assessment Year: 2005-06

Amrita Singh.....Appellant

Legal heir of Lt. Raminder Singh

Prop. Payal Theater,

Sevoke Road,

Siliguri - 734 001.

[PAN: AINPS 7401 G]

I.T.O. Ward 2(2).....Respondent

Matigara, Siliguri.

Appearances by:

None appearing on behalf of the Assessee.

Shri Arindam Bhattacharjee, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : February 13, 2018

Date of pronouncing the order : February 13, 2018

ORDER

PER P.M. JAGTAP, AM

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals), Siliguri dated 07.08.2015 whereby the Ld. CIT(A) sustained the penalty of Rs. 4,33,581/- imposed by the A.O. under section 271(1)(c) of the Act to the extent of Rs. 2,89,054/-.

2. The assessee in the present case is an individual who is engaged in the business of running a cinema hall. The return of income for the year under consideration was filed by him on 31.03.2005 declaring his total income at nil. In the assessment originally completed u/s 143(3) vide an order dated 28.12.2007, the total income of the assessee was determined by the A.O. at Rs. 19,58,980/- after making certain additions. On appeal, the Ld. CIT(A) upheld the order of the A.O. passed under section 144 and confirmed all the additions made

therein to the total income of the assessee. On appeal, the tribunal vide its order dated 21.04.2011 passed in ITA No. 1334/K/2010 confirmed one of the three additions made by the A.O. and restored the issues relating to the other two additions to the file of the A.O. for deciding the same afresh. In pursuance of the order of the Tribunal, a fresh assessment was made by the A.O. under section 143(3) vide an order dated 21.03.2013 wherein he retained the addition of Rs. 5,58,977/- made originally and confirmed by the Tribunal on account of income for undisclosed sources and also made a further addition of Rs. 12,00,000/- to the total income of the assessee on account of income from other sources.

3. In respect of addition of Rs. 5,58,978/- made in the original assessment on account of income from undisclosed sources and confirmed by the Tribunal, penalty proceedings under section 271(1)(c) were initiated by the A.O. and since the explanation offered by the assessee in response to the show cause notice issued during the course of the said proceedings was not found acceptable by him, the Assessing Officer proceeded to impose penalty of Rs. 4,33,581/- under section 271(1)(c) being 300% of the tax sought to be evaded by the assessee in respect of the addition of Rs. 5,58,978/- by treating the same as the concealed income of the assessee.

4. The penalty imposed by the A.O. under section 271(1)(c) was challenged by the assessee in the appeal filed before the Ld. CIT(A) and since there was no compliance on the part of the assessee to the notices issued by him fixing the said appeal for hearing from time to time, the Ld. CIT(A) proceeded to dispose of the said appeal of the

assessee vide his appellate order dated 07.08.2015 passed ex-parte. By the said order, he upheld the action of the A.O. in imposing the penalty u/s 271(1)(c) but restricted the amount of such penalty to 200% of the tax sought to be evaded as against 300% levied by the A.O. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. At the outset, it is noted that there is a delay of 143 days on the part of the assessee in filing this appeal before the Tribunal. Although none has appeared on behalf of the assessee at the time of hearing fixed before the Tribunal today i.e. 13.02.2018, the affidavit filed by the legal heirs of the assessee is placed on record explaining the reasons for the delay in filing, the appeal before the Tribunal as well as for the non appearance before the Ld. CIT(A) as under:

"That my father Lt. Raminder Singh was suffering obstructive Jaundice and Carcinoma (Cancer) in head of pancreas and was lying admitted in Asian Institute of Gastroenterology at Hyderabad, during 31.07.2015 to 12.08.2015. After release therefrom, he died on 15.08.2015 at Siliguri, supported by certificate of death dated 21.08.2015.

That he was an Income Tax Assessee, assessed to Income Tax under PAN – AINPS7401G. A penalty of Rs. 4,33,581/- was levied against him by the Ld. Income Tax Assessing Officer u/s 271(1)(c) of the I.T. Act, 1961.

That the appeal there against was lying pending before the Ld. Commissioner of Income Tax (Appeal) Siliguri. The said appeal was fixed for hearing by him, but my late father being sufferer of obstructive Jaundice and Carcinoma (Cancer) on the head of pancreas and lying admitted in the Asian Institute of Gastroenterology at Hyderabad, could not attend the appeal date.

The Ld. CIT(Appeal) passed the order ex-parte on 07.08.2015, which was though received by his legal representatives on 12.08.2015 but because of my late father's death, we could not attend the action to be followed there

against and the second appeal to be filed there against became time barred.

I, now being one of the legal heirs, have attained normal senses and on persuasion am to file an appeal against the said order of Ld. CIT(A) dated 07.08.2015."

6. Keeping in view the averments made by the legal representative of the assessee on oath as above, we are satisfied that there was a sufficient cause for the delay on the part of the assessee in filing this appeal before the Tribunal. Even the learned DR has also not raised any objection in this regard. The delay on the part of the assessee in filing this appeal before the Tribunal is therefore condoned.

7. Having regard to the averments made by the legal representative of the assessee in the affidavit, we are also satisfied that the non-appearance of the assessee during the course of appellate proceedings before the Ld. CIT(A) was for sufficient cause. We, therefore, set aside the impugned order passed by the Ld. CIT(A) 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 of being heard to the assessee.

8. In the result, the appeal of the assessee is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 13th February, 2018.

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 13/02/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Amrita Singh, Legal heir of Lt. Raminder Singh, Prop. Payal Theater, Sevoke Road, Siliguri – 734 001.
2. I.T.O. Ward 2(2), Matigara, Siliguri.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata