

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
[Before Shri P.M. Jagtap, Hon'ble Accountant Member]**

**I.T.A. No. 1518/Kol/2017
Assessment Year: 2012-13**

Sudish Yadav.....Appellant
Prakash Nagar, Bypass
NH-31, Sevok Road
Siliguri
Darjeeling
[PAN : AAKPY 1276 C]

I.T.O. Ward-2(2), Siliguri..... Respondent
Siliguri

Appearances by:

Shri Subhash Agarwal, Advocate, appeared on behalf of the assessee.

Shri S.M. Tauheed, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : February 12th, 2017

Date of pronouncing the order : February 21st, 2018

O R D E R

Per P.M. Jagtap :-

This appeal filed by the assessee is directed against the *ex-parte* order of the Id. Commissioner of Income Tax (Appeals)-Siliguri, dt. 18/11/2017, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dismissing the appeal of the assessee filed before him.

2. At the outset, it is noted that there is a delay of 161 days on the part of the assessee in filing of this appeal before the Tribunal. In this regard, the assessee has filed an application seeking condonation of the said delay on the following grounds:-

“2. That I was suffering from jaundice from 16th of December 2016 to 19th June, 2017. Therefore, I was advised by the doctor bed rest. Copy of Medical Certificate is annexed herewith and marked as **Annexure “A”**.

3. That after my revival from the ailment, I contacted Sri Subash Agarwal, Advocate on or around 21/06/2016 and handed over the relevant papers for the purpose of filing appeal.

4. That Sri Subash Agarwal, Advocate asked for some more documents which were handed over to him on or around 26/06/2016.

5. That the appeal papers were lodged in the office of the Ld. Income Tax Appellate Tribunal on 27/06/2016 after a delay of around 162 days.”

3. Keeping in view the submissions made by the assessee, as above, which is duly supported by a medical certificate, I am satisfied that there was a sufficient cause for the delay of 161 days on the part of the assessee in filing this appeal. Even the ld. D/R, has not raised any objection in this regard. I, therefore, condone the said delay and proceed to dispose off this appeal of the assessee on merit.

4. The assessee in the present case is an individual, who is engaged in the business of trading of construction equipment and machinery. The return of income for the year under consideration was filed by him on 30/03/2013 declaring total income of Rs.9,47,300/-. In the assessment completed u/s 143(3) vide an order dt. 31/03/2015, the total income of the assessee was determined by the Assessing Officer at Rs.43,10,128/- after making additions of Rs.3,31,000/- & Rs.29,71,828/-, on account of repayment of loan in cash and unexplained capital contribution respectively.

5. Against the order passed by the Assessing Officer u/s 143(3) of the Act, the assessee preferred an appeal 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 on four different occasions, the ld. CIT(A) proceeded to dismiss the same vide his Appellate order dt. 18/11/2016 passed *ex-parte*.

6. Aggrieved, by the same, the assessee has preferred this appeal before the Tribunal on the following grounds:-

"1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in passing the ex-parte order.

2. For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have deleted the addition of Rs.3.31.000/- made by the A.O. being loan repaid to one Prakash Singh by wrongly invoking the provisions of section 269T.

3. For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have deleted the addition of Rs.29, 71,828/- made by the A.O. in respect of amount received as gifts wrongly treating the same as unexplained cash credit u/s 68 of the Income tax Act, 1961.

4. *That the appellant craves leave to add, alter or delete all or any of the grounds of appeal."*

7. I have heard the arguments for both the sides and also perused the relevant material available on record. In Ground No. 1, the assessee has raised a preliminary issue challenging the impugned order passed by the Id. CIT(A) *ex-parte*. In this regard, the Id. Counsel for the assessee has contended that the assessee was seriously ill during the relevant period and in the absence of any proper diagnosis, his medical treatment got delayed. He has contended that there was, thus, sufficient cause for the non-appearance of the assessee before the Id. CIT(A) and since the Id. CIT(A) vide his impugned order passed *ex-parte* has not decided the issues raised in the appeal on merits, the matter may be sent back to the Id. CIT(A) for disposing off the appeal of the assessee afresh. I find merit in this contention of the Id. Counsel for the assessee. Even the Id. D/R, has not raised any objection for sending the matter back to the Id. CIT(A). As per sub-section (6) of Section 250 of the Act, the Id. CIT(A), disposing off the appeal has to be in writing stating therein the points for determination, decision thereon and the reason for the decision. A perusal of the impugned order of the Id. CIT(A) passed *ex-parte* shows that it does not comply with the requirement of Section 250(6) of the Act. I, therefore, set aside the order passed by the Id. CIT(A) *ex-parte* and remit the matter back to him for disposing off the appeal of the assessee afresh on merits, after giving the assessee proper and sufficient opportunity of being heard.

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

Kolkata, the 21st day of March, 2018.

Sd/-
[P.M. Jagtap]
Accountant Member

Dated :21.02.2018
{SC SPS}

Copy of the order forwarded to:

1. Sudish Yadav

Prakash Nagar, Bypass

NH-31, Sevok Road

Siliguri

Darjeeling

2. I.T.O. Ward-2(2), Siliguri

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches