

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA*

Before **Shri Aby.T Varkey, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.59/Kol/2017
Assessment Year :2010-11

M/s Astha Nursing Home, A-9X/4, CA,A Block, Kalyani,Nadia-741235 [PAN No.AAKFA 3492 N]	V/s.	Asstt. Commissioner of Income Tax, Circle- Nadia, Krishnagar, Nadia, Pin-741101
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri S.P. Datta, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Arindam Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	26-02-2018
घोषणा की तारीख/Date of Pronouncement	28-03-2018

आदेश /ORDER

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-12, Kolkata dated 07.06.2016. Assessment was framed by ACIT, Circle, Nadia u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 14.03.2013 for assessment year 2010-11.

Shri S.P. Datta, Ld. Advocate appeared on behalf of assessee and Shri Arindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue.

2. At the outset, Ld. AR for the assessee draw our attention that the appeal is barred by limitation for 99 days. The reason for the delay was explained as under :

- i. That the business of assessee ceased to exist during that period of time for which no delivery of the order was made through postal communication.
- ii. Subsequently the Authorized Representative of assessee obtained the order through hand delivery from the office of Id. CIT(A).
- iii. That there was also some serious health issue with the assessee.

As a result the delay in filing the appeal within the time occurred. The assessee in support of his claim also filed the affidavit which is placed on record. As such the Id AR prayed for the condonation of delay in filing the appeal. The Id. DR raised no objection and left the issue at the discretion of the Bench. After hearing both the sides we are of the view that there was a sufficient cause for the delay on the part of the assessee in filing this appeal. Hence, we condone the said delay and proceed to dispose of this appeal of the assessee on merit.

3. At the outset, it was observed that Ld. CIT(A) has passed *ex parte* order on the ground that assessee failed to appear despite notices for hearing were issued upon assessee but returned back as un-served with the remarks "Left". Therefore, the Id. CIT(A) was of the view that assessee is not interested in perusing the appeal. Thus the ex-parte order was passed.

4. We have heard the Id. representatives of both the parties and have perused the orders of the authorities below. The main grievance of the assessee is that there was no proper notice of the hearing served on the assessee. However, the Id. Departmental Representative submitted that the notices sent to the assessee by Id. CIT(A) were returned 'unserved' and the

assessee had not given any intimation of change of address. Be that as it may, we, in the interest of justice and fair play, set aside the orders or the authorities below and restore the matter to the Id. CIT-A with a direction that he will adjudicate the matter afresh as per provisions of law and after giving adequate opportunity of hearing to the assessee. The assessee will be at liberty to file such evidence as he may consider necessary. However, if the assessee fails to cooperate the Id. CIT-A, then he will be at liberty to adjudicate the issue on the basis of the material available with him.

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

Order pronounced in the open court 28/03/2018

Sd/-
(Aby. T. Varkey)
(Judicial Member)
Kolkata,
*Dkp

Sd/-
(Waseem Ahmed)
(Accountant Member)

दिनांक:- 28/03/2018 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Astha Nursing Home, A-9X/4, CA,A Block, Kalyani, Pin741235
2. प्रत्यर्थी/Respondent-ACIT, Circle, Nadia, Krishnagar, Pin 741101
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण, कोलकाता ।