

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

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 418/KOL/2018
Assessment Year: 2007-2008**

***M/s. Star Track Agency Pvt. Limited,.....Appellant
23A, N.S. Road, 1st Floor,
Kolkata-700 001
[PAN: AA ECS 4100 N]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-3(2), Kolkata,
P-7, Chowringhee Square,
Aayakar Bhawan,
Kolkata-700 069***

Appearances by:

Shri Anikesh Banerjee, Advocate & Mrs. Saswati Mitra (Dutta), Advocate, for the Appellant

Shri Goutam Mondal, Addl. CIT, for the Respondent

Date of concluding the hearing : July 26, 2018

Date of pronouncing the order : August 29, 2018

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-1, Kolkata dated 22.08.2017, whereby he dismissed the appeal of the assessee filed before him *ex-parte*.

2. At the outset, it is noted that there is a delay of 135 days on the part of the assessee in filing this appeal before the Tribunal. In this regard, the assessee has moved an application seeking condonation of the said delay and keeping in view the reasons given therein, I am 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 Id. D.R. has not raised any objection in this regard. The said delay is accordingly condoned and this appeal of the assessee is being disposed of on merit.

3. The assessee in the present case is a Company, which is engaged in the business of Managing Warehouses. In the assessment originally completed under section 143(3) vide an order dated 30.12.2009, the total income of the assessee for the year under consideration was determined by the Assessing Officer at Rs.24,94,840/- after making *inter alia* an addition of Rs.10,39,250/- being 50% of the unverifiable purchases. On appeal, the Id. CIT(Appeals) deleted the said addition. On further appeal, the Tribunal vide its order dated 03.05.2013 restored the matter to the file of the Assessing Officer for verifying the claim of the assessee for the concerned purchases after giving one more opportunity to the assessee. As per the direction of the Tribunal, opportunity was given by the Assessing Officer to the assessee to support and substantiate its claim for the concerned purchases by furnishing the relevant details and documents. According to the Assessing Officer, the assessee, however, failed to furnish the relevant details and documents and in the absence of the same, the Assessing Officer repeated the addition of Rs.10,39,250/- to the total income of the assessee on account of unverifiable purchases in the order dated 27.10.2014 passed under section 254/143(3) of the Income Tax Act, 1961.

4. Against the order passed by the Assessing Officer under section 254/143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and since there was no satisfactory compliance on the part of the assessee to the notices issued by him fixing the said appeal for hearing from time to time, the Id. CIT(Appeals) dismissed the appeal of the assessee vide his appellate order dated 22.08.2017 passed *ex-parte*.

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

5. In support of the preliminary issue raised by the assessee in this appeal challenging the impugned order passed by the Id. CIT(Appeals) *ex-parte* without giving reasonable opportunity of being heard, the Id. Counsel for the assessee has submitted that adjournments were sought by the assessee when its appeal was initially fixed for hearings before the Id. CIT(Appeals). He has submitted that the appeal of the assessee after granting the said adjournments was fixed by the Id. CIT(Appeals) for hearing on 10.08.2017. He has submitted that the Id. Authorized Representative of the assessee Advocate Mrs. Saswati Mitra (Dutta) duly appeared before the Id. CIT(Appeals) on 10.08.2017 and sought adjournment. Accordingly the hearing was adjourned to 16.08.2017 and when she went to the office of the Id. CIT(Appeals) on 16.08.2017, the Id. CIT(Appeals) was not available in the office and she was suggested to appear again within next two dates. He contended that Advocate Mrs. Saswati Mitra (Dutta), however, had to leave for Bankura owing to her mother's serious illness on 17.08.2017 and by the time she could return back and visit the office of the Id. CIT(Appeals), the order was already passed by the Id. CIT(Appeals) on 22.08.2017 dismissing the appeal of the assessee *ex-parte*. Since these submissions made by the Id. Counsel for the assessee are duly supported by an affidavit of Advocate Mrs. Saswati Mitra (Dutta) affirming the relevant facts on oath, I am satisfied that there was a sufficient cause for the non-appearance of the assessee before the Id. CIT(Appeals) when its appeal was fixed for hearing. 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 the assessee proper and sufficient opportunity of being heard. As undertaken by the Id. Counsel for the assessee, the assessee shall make due compliance before the Id.

CIT(Appeals) and shall extend all the possible cooperation in order to enable the Id. CIT(Appeals) to dispose of the appeal expeditiously.

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

Order pronounced in the open Court on August 29, 2018.

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

Kolkata, the 29th day of August, 2018

- Copies to :*
- (1) *M/s. Star Track Agency Pvt. Limited,
23A, N.S. Road, 1st Floor,
Kolkata-700 001***
 - (2) *Income Tax Officer,
Ward-3(2), Kolkata,
P-7, Chowringhee Square,
Aayakar Bhawan,
Kolkata-700 069***
 - (3) *Commissioner of Income Tax (Appeals)-1, Kolkata,***
 - (4) *Commissioner of Income Tax- ,***
 - (5) *The Departmental Representative***
 - (6) *Guard File***

By order

*Senior Private Secretary,
Head of Office/D.D.O.
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.