

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

**Before Shri P.M. Jagtap, Vice-President (KZ)**

**I.T.A. No. 1671/KOL/2018  
Assessment Year: 2014-2015**

***Avinash Kumar Agarwal,.....Appellant***  
***20A, Baguiati 2<sup>nd</sup> Lane, Latika Prova,***  
***3<sup>rd</sup> Floor, Aam Bagan,***  
***Kolkata-700 059***  
***[PAN: AGZPA 1670 M]***

***Vs.-***

***Income Tax Officer,.....Respondent***  
***Ward-22(4), Kolkata,***  
***54/1, Rafi Ahmed Kidwai Road, 4<sup>th</sup> Floor,***  
***Kolkata-700 028***

**Appearances by:**

*N o n e, for the Appellant*

*Shri Satyajit Mondal, Addl. CIT, D.R., for the Respondent*

Date of concluding the hearing : November 22, 2018

Date of pronouncing the order : November 22, 2018

**O R D E R**

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-6, Kolkata dated 18.05.2018 passed ex-parte, whereby he dismissed the appeal of the assessee for non-prosecution.

2. The assessee in the present case is an individual, who is practising as a Chartered Accountant. The return of income for the year under consideration was filed by him on 27.03.2015 declaring total income of Rs.3,75,380/-. In the assessment completed under section 143(3) vide an order dated 27.12.2016, the total income of the assessee was determined by the Assessing Officer at Rs.11,58,322/- after making an addition of Rs.7,82,938/- by disallowing the claim of the assessee for exemption on account of long-term capital gain under section 10(38) of the Act.

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 from time to time, the Id. CIT(Appeals) dismissed the appeal of the assessee vide his appellate order dated 18.05.2018 passed ex-parte for non-prosecution. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. At the time of hearing before the Tribunal fixed today, none has appeared on behalf of the assessee nor any application seeking adjournment has been filed. This appeal of the assessee is, therefore, being disposed of ex-parte after hearing the arguments of the Id. D.R. and perusing the relevant material available on record.

5. In Ground No. 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 and sufficient opportunity of being heard was not given by the Id. CIT(Appeals). In this regard, it is noted from the impugned order of the Id. CIT(Appeals) that the notice sent fixing the appeal of the assessee for hearing initially on 16.03.2018 was returned by the Postal Authority undelivered with the remark "addressee not available at the time of delivery". The Id. CIT(Appeals) again fixed the hearing on 27.03.2018 and although the notice of the said hearing was served on the assessee, the assessee sought adjournment. The hearing accordingly was adjourned by the Id. CIT(Appeals) to 17.05.2018 and since none attended on behalf of the assessee on 17.05.2018, he dismissed the appeal of the assessee vide his appellate order dated 18.05.2018 passed ex-parte for non-prosecution on the part of the assessee. Keeping in view all these facts borne out from the impugned order of the Id. CIT(Appeals), I am of the view that the assessee cannot be said to have given proper and sufficient opportunity of being heard by the

ld. CIT(Appeals) before dismissing the appeal ex-parte for non-prosecution and even the ld. D.R. has not disputed this position. I, therefore, set aside the impugned order of the ld. CIT(Appeals) passed 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.

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

Order pronounced in the open Court on November 22, 2018.

**Sd/-  
(P.M. Jagtap)  
Vice-President (KZ)**

***Kolkata, the 22<sup>nd</sup> day of November, 2018***

- Copies to :*
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Kolkata-700 059***
  - (2) ***Income Tax Officer,  
Ward-22(4), Kolkata,  
54/1, Rafi Ahmed Kidwai Road, 4<sup>th</sup> Floor,  
Kolkata-700 028***
  - (3) ***Commissioner of Income Tax (Appeals)-6, Kolkata,***
  - (4) ***Commissioner of Income Tax-***
  - (5) ***The Departmental Representative***
  - (6) ***Guard File***

*By order*

***Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata***

***Laha/Sr. P.S.***