

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

**Before Shri P.M. Jagtap, Vice-President (KZ)
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. Nos. 445 & 446/KOL/2018
Assessment Year: 2013-2014**

Anil Kumar Sen (now deceased).....Appellant
C/o. Surajit Sen,
S/o. Late Anil Kumar Sen,
10, Crooked Lane, Kolkata-700 069
[PAN: AJJPS 2782 F]

-Vs.-

Assistant Commissioner of Income Tax,.....Respondent
Circle-40, Kolkata,
3, Govt. Place West, Kolkata-700 001

Appearances by:

N o n e, for the Appellant

Shri S. Halder, Sr. D.R., for the Respondent

Date of concluding the hearing : December 20, 2018

Date of pronouncing the order : December 20, 2018

O R D E R

Per Shri P.M. Jagtap, Vice-President (KZ):-

These two appeals filed by the assessee are directed against two separate orders of Id. Commissioner of Income Tax (Appeals)-12, Kolkata, both dated 04.09.2017.

2. The assessee in the present case is an individual, who filed his return of income for the year under consideration on 27.07.2013 declaring total income of Rs.45,05,630/-. In the assessment completed under section 143(3) vide an order dated 21.08.2015, the total income of the assessee was determined by the Assessing Officer at Rs.62,22,140/- after making certain additions. The Assessing Officer also initiated

penalty proceedings under section 271(1)(c) and since the explanation offered by the assessee in response to the notices issued during the course of the said proceedings was not found acceptable by him, the Assessing Officer imposed penalty of Rs.4,41,060/- under section 271(1)(c) being 100% of the tax sought to be evaded by the assessee.

3. Against the orders passed by the Assessing Officer under sections 143(3) and 271(1)(c), two separate appeals were 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 appeals for hearing from time to time, the Id. CIT(Appeals) dismissed the appeals of the assessee vide his two separate orders both dated 04.09.2017 passed ex-parte. Aggrieved by the orders of the Id. CIT(Appeals), the assessee has preferred these appeals before the Tribunal.

4. As noted at the outset, there is a delay of 45 days on the part of the assessee in filing these appeals before the Tribunal. In this regard, applications are filed by the Id. Authorized Representative of the assessee seeking condonation of the said delay and keeping in view the reasons given therein, we are satisfied that there was a sufficient cause for the delay of 45 days on the part of the assessee in filing these appeals before the Tribunal. Even the Id. D.R. has not raised any objection in this regard. We accordingly condone the said delay and proceed to dispose of these appeals of the assessee on merit.

5. At the time of hearing fixed today in these cases, none has appeared on behalf of the assessee. It is, however, noted that these appeals are filed by the legal heir of the assessee and as mentioned in the grounds raised in these appeals, the assessee has expired on 23.12.2016. As further stated in the grounds, the assessee was no more even when his appeals were taken up for hearing by the Id. CIT(Appeals) and since the

notices of hearings issued by the Id. CIT(Appeals) could not be served on the assessee, there was no compliance on behalf of the assessee. In the grounds raised, the impugned orders passed by the Id. CIT(Appeals) ex-parte are also challenged on the ground that notice of hearing was not given by the Id. CIT(Appeals) to the legal heir of the assessee before passing the said orders. Keeping in view this grievance projected in the grounds raised in these appeals of the assessee, the Id. D.R. has submitted that these cases may be remitted back to the Id. CIT(Appeals) for disposing of the appeals of the assessee afresh after bringing the legal heir of the assessee on record and after giving an opportunity of being heard to such legal heir. We find merit in this contention of the Id. D.R. Accordingly the impugned orders of the Id. CIT(Appeals) are set aside and the matter is remitted to the Id. CIT(Appeals) for disposing of the appeals of the assessee afresh after bringing the legal heir of the assessee on record and after giving the said legal heir proper and sufficient opportunity of being heard.

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

Order pronounced in the open Court on December 20, 2018.

Sd/- (S.S. Viswanethra Ravi) Judicial Member	Sd/- (P.M. Jagtap) Vice-President (KZ)
---	---

Kolkata, the 20th day of December, 2018

Copies to : (1) **Anil Kumar Sen (now deceased)**
C/o. Surajit Sen,
S/o. Late Anil Kumar Sen,
10, Crooked Lane, Kolkata-700 069

(2) **Assistant Commissioner of Income Tax,**
Circle-40, Kolkata,
3, Govt. Place West, Kolkata-700 001

(3) **Commissioner of Income Tax (Appeals)-12, 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.