

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (D), KOLKATA**

[Before Shri P.M. Jagtap, Vice President & Shri A.T. Varkey, Judicial Member]

**I.T.A. No. 708/Kol/2018
Assessment Year: 2012-13**

Debasish Bhattacharjee.....Appellant
394/1, Neel Appartment,
Kendua Main Road,
Kolkata - 700 084.
[PAN: ADZPB 9976 E]

ITO Ward 61(1), Kolkata.....Respondent
169, A.J.C. Bose Road, 1st Floor,
Bamboo Villa, Central Building,
Kolkata - 700 014.

Appearances by:

None appearing on behalf of the Assessee.

Shri Sankar Halder, JCIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : January 08, 2019

Date of pronouncing the order : January 08, 2019

ORDER

Per P.M. Jagtap, Vice President

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 19, Kolkata dated 11.01.2018 passed ex-parte dismissing the appeal of the assessee.

2. The assessee in the present case is an individual who filed his return of income for the year under consideration on 6th October, 2012 declaring a total income of Rs. 11,05,440/-. In the assessment completed u/s 143(3) vide an order dated 27.03.2015, the total income of the assessee was determined by the A.O. at Rs. 17,72,890/- after making addition of Rs. 6,07,046/- on account of disallowance of Misc. expenses and Rs. 40,408/- on account of disallowance of Finance charges. Penalty proceedings u/s 271(1)(c) was also initiated by the A.O. and since the explanation offered by the assessee in

response to the show cause notice issued during the course of the said proceedings was not found acceptable by him, the A.O. imposed a penalty of Rs. 2,01,116/- u/s 271(1)(c) of the Act.

3. The penalty imposed by the A.O. u/s 271(1)(c) was challenged by the assessee in the appeal filed 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 from time to time, the Ld. CIT(A) dismissed the appeal of the assessee for non-prosecution vide his appellate order dated 11.01.2018 passed ex-parte. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. At the time of hearing fixed before the Tribunal today, none has appeared on behalf of the assessee. It is however noticed that the appeal filed by the assessee has been dismissed by the Ld. CIT(A) vide his impugned order passed ex-parte for non-prosecution on the part of the assessee without going into the merit of the issue raised therein. As per the provision of sub-section 6 of section 250, the Ld. CIT(A) is required to dispose of the appeal of the assessee vide an order passed in writing stating the points for determination, the decision thereon and the reason for the decision. The impugned order passed by the Ld. CIT(A) thus is not in accordance with the provisions of sub-section 6 of section 250 and even the learned DR has not been able to dispute this position. He however has urged that the matter may be sent back to the Ld. CIT(A) for disposing of the appeal of the assessee afresh by passing an order as per the specific provision

contained in sub-section 6 of section 250. Accordingly, the impugned order passed by the Ld. CIT(A) ex-parte is set aside and the matter is remitted back to him for disposing of the appeal of the assessee afresh on merit by passing speaking order and after giving one more opportunity of being heard to the assessee.

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

Order Pronounced in the Open Court on 8th January, 2019.

Sd/-

(A.T. Varkey)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
Vice President

Dated: 08/01/2019

Biswajit, Sr. PS

Copy of order forwarded to:

1. Debasish Bhattacharjee, 394/1, Neel Appartment, Kendua Main Road, Kolkata – 700 084.
2. ITO Ward 61(1), 169 A.J.C. Bose Road, 1st Floor, Bamboo Villa, Central Building, Kolkata – 700 014.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata