

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH '(SMC)', KOLKATA
[Before Shri P.M. Jagtap, Vice President, KZ]**

I.T.A. No. 2567 & 2568/Kol/2018
Assessment Year: 2008-09 & 2012-13

Smt. Sushila Devi Jaiswal.....Appellant
C/o. M/s. K.S. Engineering Works,
81/1, Beneras Road,
Howrah - 711 101.
[PAN: ACWPJ 6786 G]

DCIT, Circle 47, Kolkata.....Respondent
3, Government Place,,
Kolkata - 700 001.

Appearances by:

Shri M.D. Shah, Advocate appearing on behalf of the Assessee.

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

Date of concluding the hearing : April 11, 2019

Date of pronouncing the order : May 03, 2019

ORDER

These two appeals filed by the assessee are directed against two separate orders dated 26.09.2018 & 21.05.2018 passed by the Ld. CIT (A) - 14, Kolkata ex-parte dismissing the appeals of the assessee for A.Y. 2008-09 and 2012-13 respectively for non-prosecution.

2. The assessee in the present case is an individual who is engaged in the business of manufacturing of iron goods including railway equipments. The return of income for both the years under consideration were filed by her on 29.09.2008 and 27.09.2012 disclosing a total income of Rs. 16,70,339/- and Rs. 23,31,080/- for AY 2008-09 and 2012-13 respectively. In the assessment completed u/s 144/254/143(3) vide an order dated 22.12.2017, the total income of the assessee for AY 2008-09 was determined by the AO at Rs. 22,35,436/- after making an addition of Rs. 5,65,097/- on account of disallowance of labour and welding charges expenses by treating

the same as bogus. The assessment for AY 2012-13 was completed by the AO u/s 143(3) of the Act vide an order dated 23.03.2015 determining the total income of the assessee at Rs. 27,93,257/- after making additions of Rs. 2,93,468/- on account of disallowance of various expenses and Rs. 1,68,439/- on account of disallowance u/s 14A.

3. Against the orders passed by the AO u/s 144/254/143(3) for AY 2008-09 u/s and 143(3) for AY 2012-13, appeals were filed by the assessee before the Ld. CIT(A) and since there was no satisfactory compliance on the part of the assessee to the notices issued by him fixing the said appeals for hearing from time to time, the Ld. CIT(A) dismissed the appeals of the assessee vide his impugned orders passed ex-parte. Aggrieved by the same, the assessee has preferred these appeals before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the learned counsel for the assessee, the appeal of the assessee for AY 2008-09 was fixed by the Ld. CIT(A) for hearing only twice and that too within a period of one month and since the assessee could not appear on the said dates due to some unavoidable circumstances, the Ld. CIT(A) proceeded to dismiss the appeal of the assessee ex-parte without giving any further opportunity of being heard to the assessee. He has contended that the appeal of the assessee for AY 2008-09 thus has been dismissed by the Ld. CIT(A) without giving proper and sufficient opportunity to the assessee of being heard and this position which is clearly evident from the impugned order of the Ld. CIT(A) is not disputed even by the learned

DR. I, therefore, set aside the impugned order passed by the Ld. CIT(A) for AY 2008-09 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.

5. As regards the appeal of the assessee for AY 2012-13, the learned counsel for the assessee has submitted that although the said appeal was fixed for hearing by the Ld. CIT(A) on four different dates, the authorised representative of the assessee, Shri Ashok Kumar Agarwal, Chartered Accountant could not appear at the time of last hearing fixed on 14.05.2018 due to illness. Since this submission made by the learned counsel for the assessee is duly supported by an affidavit of Shi Ashok Kumar Agarwal, Chartered Accountant affirming the relevant facts on oath, I am satisfied that there was a sufficient cause for the non-appearance of the assessee before the Ld. CIT(A) when her appeal was fixed for hearing. I, therefore, set aside the impugned order passed by the Ld. CIT(A) for AY 2012-13 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, both the appeal of the assessee are treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 3rd May, 2019.

Sd/-
(P.M. Jagtap)
VICE PRESIDENT

Dated: 03/05/2019
Biswajit, Sr. PS

Copy of order forwarded to:

1. Smt. Sushila Devi Jaiswal, C/o. M/s. K.S. Engineering Works, 81/1, Beneras Road, Howrah – 711 101.
2. DCIT, Circle – 47, Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

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