

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'SMC', LUCKNOW**

**BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.706/Lkw/2017  
Assessment year:2013-14

M/s Manoj Metal Industries, 122/1-E4, Sarojini Nagar, Kanpur. PAN:AARFM 1515 B (Appellant)	Vs.	Income Tax Officer-2(2), Kanpur.  (Respondent)
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Appellant by	Shri P. K. Kapoor, C. A.
Respondent by	Smt. Alka Singh, D. R.
Date of hearing	16/05/2019
Date of pronouncement	16/05/2019

**ORDER**

**PER T. S. KAPOOR, A.M.**

This is an appeal filed by the assessee against the order of learned CIT(A)-I, Kanpur, dated 14/06/2018 pertaining to assessment year 2013-14.

2. At the outset, Learned A. R. invited our attention to the fact that there has been a delay of one day in filing the appeal. The assessee has submitted the condonation application dated 06/11/2017 duly supported by sworn in affidavit stating therein that the date of filing appeal was 5<sup>th</sup> November, 2017 but 4<sup>th</sup> and 5<sup>th</sup> November, 2017 were holidays on account of Guru Nanak Birthday and Sunday therefore, the appeal was filed late by one day. Learned A. R. prayed that keeping in view the above facts, the delay of one day in filing the appeal may be condoned.

3. Learned D. R. had no objection to condonation of delay and therefore, keeping in view the facts and circumstances of the case, the delay was condoned and Learned A. R. was asked to argue on merits.

4. I have heard the rival parties and have gone through the material placed on record. I find that the appeal was earlier dismissed for non prosecution vide Tribunal order dated 30/11/2018. However, vide Tribunal order dated 20/03/2019, the said order was recalled and the appeal was listed for hearing on merits. I noted that learned CIT(A) has passed ex-parte order as according to him, nobody has appeared on the date when the appeal was fixed for hearing before him. From the order of CIT(A), it is not clear as to on which date the learned CIT(A) had issued notice and on which date the case was fixed for hearing before hearing and where the notice issued by him was served on the assessee or not and when nobody appeared before learned CIT(A), he passed the ex-parte order. I feel that one more opportunity should be given to the assessee as learned CIT(A) has not decided the appeal on merits. The provision of section 250 which deals with the procedure in appeal before the CIT(A), allows a right to an assessee to be heard at the time of hearing of appeal. Even the natural justice demands that no appeal should be disposed of without being heard the party or without giving him the proper and sufficient opportunity. I am of the view from the facts of the case that the assessee has not been given proper and sufficient opportunity before disposing of the appeal by the CIT(A). I, therefore, in the interest of justice and fair play to both the parties, set aside the order of CIT(A) and restore the appeal to the file of the CIT(A) with the direction that the CIT(A) shall refile the said appeal and decide the appeal afresh after giving proper and sufficient opportunity of being heard to the assessee. The assessee is also directed to be present on the date of hearing fixed by learned CIT(A) and not seek undue adjournment and co-operate with learned CIT(A) in disposing of the appeal.

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

(Order pronounced in the open court on 16/05/2019)

**Sd/.**  
**( T. S. KAPOOR )**  
**Accountant Member**

Dated:16/05/2019  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow