

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH, "SMC" AT KOLKATA**  
(समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य)  
[Before Shri A. T. Varkey, JM]

**I.T.A. No. 1869/Kol/2018**  
**Assessment Year: 2013-14**

Smt. Mitali Samanta L/H of Late Palash Samanta (PAN: AJUPS9328L)	Vs.	ITO, Ward-23(3), Hooghly.
Appellant		Respondent

Date of Hearing	21.02.2019
Date of Pronouncement	17.05.2019
For the Appellant	Shri Manoj Dutta, FCA
For the Respondent	Shri Satyajit Mondal, ACIT, Sr. DR

**ORDER**

This is an appeal preferred by the Assessee against the order of Ld. CIT(A) – 6, Kolkata dated 12.06.2018 for Assessment Year 2013-14.

2. Ground no. 1 of the assessee is as under:

*“1. That the Ld. CIT(A) erred in law and on facts in dismissing the appeal the appellant has suddenly died and his legal heir did not know about business, takes time to settle the crisis of untimely death of her husband at the age of 49 years and Ld. CIT(A) came to conclusion by confirming the additions is wrong, impractical and against the principle of fair and natural justice.”*

3. Though at the time of hearing, I had heard the ground nos. 2, 3 and 4 of the appeal, however, it was noted at the time of dictation of the order that the Ld. CIT(A) has passed an ex parte order without going into the merits of the case. It has to be kept in mind that while an appeal against the order of CIT(A) is filed before this Tribunal, it is the second appellate jurisdiction vested with this Tribunal is being invoked by the aggrieved party and it is the Tribunal’s duty to adjudicate as to whether the order of the first appellate authority is erroneous or not. Here, in this case, I note that the Ld. CIT(A) has not adjudicated the issues on merits and has passed an ex parte order without going into the merits of the case. Since the Ld. CIT(A) was duty bound to decide the appeal of the assessee on merits, I am unable to exercise my second appellate jurisdiction vested in me to state as to whether the

order of the Ld. CIT(A) is erroneous or not on the grounds raised. In such circumstances, since the Ld. CIT(A) has not adjudicated ground nos. 2, 3 and 4 preferred before us, I am unable to exercise the second appellate jurisdiction vested with me. Therefore, taking note of the ground no.1 of the appeal, wherein it has been stated that the present assessee is the legal heir/representative of the Late Palash Samanta was not aware of the legal nuisance of the appeal filed before the Ld. CIT(A) and could not therefore appear through AR is taken as a reasonable cause for non-appearance before the Ld. CIT(A) and, therefore, for the interest of justice and fair play, the impugned order of the Ld. CIT(A) is set aside and the appeal is restored back to the file of the Ld. CIT(A) to decide the issue on merits after affording reasonable opportunity of being heard to the assessee in accordance to law. Needless to say the assessee should diligently appear before the Ld. CIT(A) and produce records and documents to substantiate her case and the Ld. CIT(A) is directed to pass a speaking order in accordance to law. Appeal of assessee is allowed for statistical purposes.

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

Order is pronounced in the open court on 17th May, 2019

Sd/-

(Aby. T. Varkey)  
Judicial Member

Dated : 17th May, 2019

JD (Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Smt. Mitali Samanta, L/H of Late Palash Samanta, 9, G. T. Road, P.O. Srirampur, Hooghly-712201.
- 2 Respondent – ITO, Ward-23(3), Hooghly.
3. The CIT(A)-6, Kolkata. (Sent through e-mail)
4. CIT , Kolkata
5. DR, ITAT, Kolkata. (Sent through e-mail)

/True Copy,

By order,

Assistant Registrar

ITAT, Kolkata