

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. 2006/Kol/2018
Assessment Year: 2013-14

Santosh Kajaria (PAN: APSPK1566N)	Vs.	ITO, Ward-63(1), Kolkata.
Appellant		Respondent

Date of Hearing	21.02.2019
Date of Pronouncement	17.05.2019
For the Appellant	Shri Paras Nath Keshari, 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) – 19, Kolkata dated 31.07.2018 for Assessment Year 2013-14.

2. At the outset, the learned AR drew our attention to the fact that though the assessee has raised four grounds of appeal but the first and foremost ground of appeal is against the action of Ld. CIT(A) in not granting sufficient and proper opportunity of being heard and instead passed the order dismissing the appeal of the assessee ex parte. The learned AR drew our attention to an affidavit sworn by the assessee, from which I discern that the first date of hearing was fixed on 26.06.2018 by the Ld. CIT(A) and upon request of the assessee, the case was adjourned for 10.07.2018. On 10.07.2018, the assessee sought again adjournment for 17.07.2018. On 17.07.2018 assessee's husband Shri Pawan Kumar Kajara appeared before the Ld. CIT(A) and filed documentary evidence in connection with assessee's claim of exemption of Long Term Capital Gain and requested for adjournment. But on 24.07.2018 the Ld. CIT(A) passed the order ex parte dismissing the appeal of the assessee, that too without going into merits. According to Ld. AR, the assessee did not get proper opportunity before the first appellate authority to represent her case. Therefore, the Ld. AR pleads that the matter to be remanded back to the file of Ld. CIT(A) for fresh adjudication. The Ld. CIT, DR opposed the remanding of the proceedings.

3. Having heard both the parties and perused the records, we note that the Ld. CIT(A) has given only two chances to the assessee to represent her case before him. But according to Ld. AR the assessee was unable to choose the proper legal consultant to protect her interest. We note that the learned AR drew our attention to an affidavit sworn by the assessee from which it is noted that the first date of hearing was fixed on 26.06.2018 by the Ld. CIT(A) and upon request of the assessee, the case was adjourned for 10.07.2018. On 10.07.2018, the assessee sought again adjournment for 17.07.2018. On 17.07.2018 assessee's husband Shri Pawan Kumar Kajaria appeared before the Ld. CIT(A) and filed documentary evidence in connection with assessee's claim of exemption of Long Term Capital Gain and requested for adjournment and the case was adjourned for 24.07.2018. But on 24.07.2018 the Ld. CIT(A) passed the order ex parte dismissing the appeal of the assessee since assessee was absent on that date before the Ld. CIT(A). Hence, according to Ld. AR, the assessee did not get proper opportunity before the Ld. CIT(A) to represent her case, which tantamount to violation of Natural Justice. According to Ld. AR, given an opportunity the assessee is ready to participate and produce all the documents to represent her case properly before the Ld. CIT(A).

4. We note that order impugned is an ex parte order and the Ld. CIT(A) has not adjudicated the appeal on merits. Taking into account the facts as emerging from the affidavit, I am of the opinion that the assessee did not get proper opportunity before the Ld. CIT(A) to represent her case in proper manner. Since we note that the assessee could not get proper opportunity before the Ld. CIT(A) in the interest of justice and fair play the impugned order is set aside and the appeal is remanded back to the file of Ld. CIT(A) for fresh adjudication in accordance to law after providing reasonable opportunity of being heard to the assessee and the assessee is directed to be diligent and participate in the proceedings before the Ld. CIT(A) without fail.

5. 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. Santosh Kajaria, 114, Regent Park, Tollygunj, Kolkata-700092.
2. Respondent – ITO, Ward-63(1), Kolkata.
3. The CIT(A)-19, Kolkata. (Sent through e-mail)
4. CIT , Kolkata
5. DR, ITAT, Kolkata. (Sent through e-mail)

/True Copy,

By order,

Assistant Registrar

ITAT, Kolkata