

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

I.T.A. No. 555/Kol/2019

Assessment Year: 2012-13

Northern Animated Animal Fees (P) Ltd.Appellant
C/o. Subash Agarwal & Associates,
Advocates Siddha Gibson, 1, Gibson Lane,
Suite 213, 2nd Floor,
Kolkata - 700 069.
[PAN: AAACN 9363 Q]

Vs

DCIT, Circle - 2, Jalpaiguri.....Respondent
Central Revenue Building,
Race Course Road, Nayabasti,
Jalpaiguri - 735 101.

Appearances by:

Shri Brijesh Kumar Singh, Advocate appearing on behalf of the Assessee.

Shri Jayant Khanra, JCIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : September 17, 2019

Date of pronouncing the order : September 17, 2019

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - Jalpaiguri dated 14.12.2018 passed ex-parte dismissing the appeal of the assessee for non-prosecution.

2. The assessee in the present case is a company. In the assessment completed u/s 143(3) vide an order dated 28.11.2014, the total income of the assessee was determined by the AO at Rs. 6,11,180/-. Subsequently, the AO noticed a mistake committed by him in the said order in not making a disallowance u/s 40A(3) of the Act on account of payment of expenditure made by the assessee in cash amounting to Rs. 3,50,000/-. In order to rectify the said mistake, a notice u/s 154 was issued by the AO and since he did not find merit in the submission made by the assessee in response to the said notice, a

rectification order u/s 154 was passed by him on 12.05.2016 making an addition of Rs. 3,50,000/- to the total income of the assessee on account of disallowance u/s 40A(3) of the Act.

3. Against the order passed by the AO u/s 154, an appeal was preferred by the assessee before the Ld. CIT(A) and since there was no compliance on the part of the assessee to the notices issued by him, the Ld. CIT(A) dismissed the appeal of the assessee for non-prosecution vide his appellate order dated 14.12.2018 passed ex-parte. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. In support of the preliminary issue raised in this appeal challenging the impugned order passed by the Ld. CIT(A) ex-parte, the assessee has filed an affidavit explaining non-compliance to the notices issued by the Ld. CIT(A) as under:

"i. That after receiving the notice of hearing I approached to Shri Sujit Basu, Advocate on 11.09.2018 the said Advocate had given various requisitions and said that he will only appear after receiving all the documents. As such, no one could appear on 12.09.2018.

ii. That after arranging all the requisite documents I approached Shri Sujit Basu Advocate on 18.09.2018 thereafter he accepted my case.

iii. That on or around 26.09.2018 mother of the said A/R was seriously ill thereafter she was admitted to hospital and after a long fight with her illness she departed on 02.10.2018. Therefore appearance could not be made by the said advocate on 04.10.2018.

iv. That the said A/R was thereafter busy in death rituals. So he could not make appearance on the subsequent date as well.

v. That the notice of hearing was received on 31.11.2018 fixing the date of hearing on 14.12.2018. On the same day when Shri Sujit Basu, Advocate reached in the office of CIT(A) at 2 p.m., the peon of the CIT(A) informed that the order was already passed.

vi. That I give an undertaking that I shall make due compliance in the abovementioned case if the case is sent back to the lower authorities and opportunity of hearing is afforded."

Keeping in view the explanation offered by the assessee as above, I am satisfied that there was a sufficient cause for the non-appearance of the assessee when its appeal was called for hearing before the Ld. CIT(A). Even the learned DR has not raised any objection in this regard. I, therefore, set aside the impugned order passed by the Ld. CIT(A) ex-parte and remit the matter back to him for disposing of the appeal of the assessee afresh on merit in accordance with law after giving proper and sufficient opportunity of being heard to the assessee. As undertaken by the learned counsel for the assessee, the assessee shall make due compliance before the Ld. CIT(A) and shall extend all the possible cooperation in order to enable the Ld. CIT(A) to dispose of the appeal expeditiously.

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

Order Pronounced in the Open Court on 17th September, 2019.

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

Dated: 17/09/2019
Biswajit, Sr. PS

Copy of order forwarded to:

1. Northern Animated Animal Fees (P) Ltd., C/o. Subash Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata – 700 069.
2. DCIT, Circle-2, Jalpaiguri.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

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