

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

**I.T.A. No. 991/Kol/2019**  
Assessment Year: 2006-07

**Smt. Anuradha Chowdhury.....Appellant**  
**L/H of Ld. Dipak Kumar Chowdhury,**  
**C/o. Subash Agarwal & Associates,**  
**Advocates Siddha Gibson,**  
**1, Gibson Lane, Suite 213, 2<sup>nd</sup> Floor,**  
**Kolkata - 700 069.**  
**[PAN: ACMPC 5336 K]**

**Vs**

**ACIT, Ward 46(2), Kolkata.....Respondent**  
**Kolkata - 700 001.**

**Appearances by:**

*Shri Siddharth Agarwal, Advocate appearing on behalf of the Assessee.*  
*Shri Jayanta Khanra, JCIT, Sr. DR appearing on behalf of the Revenue.*

Date of concluding the hearing : November 18, 2019

Date of pronouncing the order : November 18, 2019

**ORDER**

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 13, Kolkata dated 30.01.2019 passed ex-parte whereby he dismissed the appeal of the assessee for non-prosecution.

2. The assessee in the present case is an individual who was engaged in the business of transportation. In the assessment originally completed u/s 143(3) vide an order dated 15.12.2008, addition of Rs. 26,99,386/- was made by the AO on account of disallowance of dumper hire charges and repairs and maintenance charges as the assessee failed to prove the identity of the persons to whom such charges were paid and also failed to prove the genuineness of the said charges. On confirmation of the said addition by the Ld. CIT(A), an appeal was preferred by the assessee before the Tribunal and the Tribunal restored the matter to the file of the AO for

deciding the same afresh after necessary verification and after giving the assessee one more opportunity of being heard. As per the direction of the Tribunal, the AO afforded an opportunity to the assessee to support and substantiate of its claim on the issue and since the assessee failed to avail the same, the AO again made the addition of Rs. 26,99,386/- on account of disallowance of dumper hire charges and maintenance charges in the fresh assessment made u/s 254/143(3) vide an order dated 28.12.2017.

3. Against the order passed by the AO u/s 254/143(3), 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 fixing the said appeal for hearing from time to time, the Ld. CIT(A) dismissed the appeal of the assessee for non-prosecution vide his appellate order dated 30.01.2019 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 by the assessee in this appeal challenging the impugned order passed by the Ld. CIT(A) ex-parte, the learned counsel for the assessee has filed an affidavit of Smt. Anuradha Chowdhury, wife and legal heir of the assessee explaining the non-compliance on the part of the assessee during the course of appellate proceedings before the Ld. CIT(A) as under:

- “1. That I am the legal heir of Late Dipak Kumar Choudhury who expired on 16.03.2019.*
- 2. That the assessment proceedings for A.Y. 2006-07 was completed u/s 254/251/143(3) on 28.12.2017.*
- 3. That being aggrieved with the said assessment order an appeal was filed before the Ld. CIT(A) – 13.*
- 4. That the said appeal was dismissed by the Ld. CIT(A) – 13 ex-parte due to non-appearance of anyone on the dates fixed for hearing.*
- 5. That my deceased husband was suffering from various medical ailments due to which he was admitted to Hospital.*
- 6. That after going through heavy medication he rest his soul. Copy of discharge summary along with death certificate are collectively annexed and marked as Annexure ‘A’.*
- 7. That after receipt of the order of the Ld. CIT(A) – 13 on 14.03.2019, it came to my knowledge that no compliance was made and appeal was decided ex-parte.*
- 8. That I give an undertaking that proper compliances shall be made in case the abovementioned case is sent back to the file of the Ld. CIT(A).*
- 9. That the facts stated in paras 1 to 7 are true to the best of my knowledge and belief and paragraph 8 is an undertaking given by me.”*

5. Keeping in view the above facts affirmed by the legal heir of the assessee on oath, I am satisfied that there was sufficient cause for the non-appearance of the assessee before the Ld. CIT(A) when his appeal was called for hearing. 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 dismissing the appeal of the assessee for non-prosecution and remit the matter back to him for disposing of the appeal of the assessee afresh on merit after giving proper and sufficient opportunity of being heard to the assessee. As undertaken in the affidavit, the assessee shall make due compliance before the Ld. CIT(A) and shall extend all the cooperation in order to enable the Ld. CIT(A) to dispose of the appeal expeditiously.

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

Order Pronounced in the Open Court on 18<sup>th</sup> November, 2019.

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

**Dated: 18/11/2019**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. Smt. Anuradha Chowdhury, L/H of Lt. Dipak Kumar Chowdhury, C/o. Suibash Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite 213, 2<sup>nd</sup> Floor, Kolkata – 700 069.
2. ITO, Ward-45(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

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