

आयकर अपीलिय अधीकरण, न्यायपीठ – “B(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B(SMC)” BENCH: KOLKATA
 (समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य)
 [Before Shri A. T. Varkey, JM]

ITA No.2358/Kol/2019
Assessment Year: 2012-13

M/s. Topflow Realtors Private Ltd. (PAN: AAECT0881D)	Vs.	Income Tax officer, Wd-4(1), Kolkata
Appellant		Respondent
Date of Hearing		22.01.2020
Date of Pronouncement		29.01.2020
For the Appellant		Shri Tarak Nath Jaiswal, Advocate
For the Respondent		Shri Jayanta Khanra, JCIT, Sr. DR

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-2, Kolkata dated 21-06-2019 for the assessment year 2012-13.

2. At the outset itself, the Ld. AR drew our attention to the fact that the impugned order of the Ld. CIT(A) is an ex parte order without hearing the assessee. According to Ld. AR, the Ld. CIT(A) has noted that vide notice dated 23.02.2018, the appeal was fixed for hearing on 01.05.2018 and the Ld. AR of the assessee had filed letter for adjournment. Thereafter, the Ld. CIT(A) fixed the case on 17.05.2018. According to Ld. CIT(A) on 15.05.2018, the Ld. AR of the assessee filed letter for adjournment so, again the case was adjourned to 17.07.2018. On that day also the case was adjourned for sine die as per assessee's request letter. Thereafter, the Ld. CIT(A) has noted that vide notice dated 15.01.2019 the appeal as fixed for hearing on 29.01.2019 and the Ld. AR of the assessee filed letter for adjournment and the case was adjourned for 04.02.2019. On 04.02.2019 also the case was adjourned since none appeared nor any adjournment petition filed on behalf of the assessee. Thereafter the Ld. CIT(A) has noted that vide notice dated 07.05.2019 the case was fixed for hearing on 20.06.2019 on that date also none appeared on behalf of the assessee and no adjournment application was filed. According to Ld. CIT(A), neither any one appeared for the assessee nor any adjournment application was filed, the Ld. CIT(A) taking note that the notice was served upon the assessee on 13.05.2019 was pleased to dismiss the appeal

without hearing the assessee on merits. According to Ld. AR, though the assessee received the notice on 13.05.2019, the Ld. AR of the assessee due to sudden illness could not appear on 20.06.2019 and though the adjournment application was sent through his clerk, the office of the Ld. CIT(A) informed that the Ld. CIT(A) has decided the case and left the office. Therefore, since the Ld. AR suffered from ailment he could not appear before the Ld. CIT(A) is a reasonable cause for not appearing before the Ld. CIT(A) and in any event, the Ld. CIT(A) being the first appellate authority ought to have decided the appeal on merits. Therefore, he prayed that one more opportunity be given to the assessee so that the appeal can be pursued before the Ld. CIT(A) on merits. Per contra, the Ld. DR opposed the plea of the Ld. AR and wanted us not to interfere in the order of the Ld. CIT(A).

3. After hearing both the parties, it is noted that the appeal was fixed several times [thrice] and the assessee had filed adjournment applications except on two occasions. Only on the last date i.e. on 20.06.2019 the Ld. AR of the assessee could not appear because of ailment which is a reasonable cause for not appearing the Ld. CIT(A) and, therefore, I set aside the order of the Ld. CIT(A) and remand the appeal back to the file of the Ld. CIT(A) to decide the appeal on merits after hearing the Ld. AR of the assessee and the assessee is directed to be diligent in future and appear before the Ld. CIT(A) without fail.

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

Order is pronounced in the open court on 29th January, 2020.

Sd/-(Aby. T. Varkey)
Judicial Member

Dated :29.01.2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Topflow Realtors Private Ltd., 10, Old Post Office Street, 3rd floor, Room No. 99A, Kolkata-700 001.
2. Respondent – ITO, Ward-4(1), Kolkata.
3. CIT(A)-2, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar