

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'FRIDAY' 'E' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**M.A No. 55/Del/2020 in
(ITA No. 3468/DEL/2017 (A.Y. 2012-13)**

AND

ITA NO. 3468/Del/2017 (A.Y 2012-13)

Smt. Dolly Sabharwal House No. 7, Road No. 84 West Punjabi Bagh, New Delhi-110026 PAN: AAXPS1663G (APPLICANT)	Vs	Income Tax Officer, Ward 41(1), New Delhi (RESPONDENT)
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Applicant by	Sh. Amol Sinha, Adv
Respondent by	Sh. R. K. Gupta, Sr. DR

Date of Hearing	13.03.2020
Date of Pronouncement	.03.2020

ORDER

PER SUCHITRA KAMBLE, JM

This Miscellaneous Application is filed by the assessee in respect of order dated 23/08/2019 passed by the Tribunal.

2. The Ld. AR submitted that the abovementioned appeal was filed by the assessee before this Tribunal challenging the order passed by the CIT(A) -XIV, New Delhi dated 09.12.2016. The Ld. AR further submitted that the captioned matter was listed before this Tribunal on 08.08.2019 and the Tribunal dismissed the appeal due to the non- appearance of the assessee on the date of hearing. The Ld. AR submitted that the non- appearance of the Assessee was neither deliberate nor intentional as the counsel appearing for the assessee i.e. Sh. D. N. Batra had expired on December 2019, he was bedridden for 8

months and also lost his eye sight. Therefore because of the death of the counsel, no one appeared on the particular date and the order was passed ex-parte passed by this Tribunal. The Ld. AR submitted that the assessee therefore in view of the above mentioned circumstances and in light of the order passed by this Tribunal filed the present application to recall the order dated 23.08.2019 and restore the appeal filed by the Assessee. The Ld. AR submitted that the present application moved by the Assessee is bona fide and in the interest of justice and no prejudice would be caused to the Respondent, if the said application is allowed by the Tribunal.

3. The Ld. DR vehemently opposed the Miscellaneous Application.

4. We have heard both the parties and perused the material available on record. The order dated 23/08/2019 was passed ex-parte on merit. The Ld. AR submitted that as the counsel of the assessee was not well and afterwards in December 2019, the Counsel of the assessee expired, therefore, the assessee could not be represented before the Tribunal at the time of the appeal hearing. Thus, prima facie the assessee made out the case for recalling the order dated 23.08.2019 and allowing this Miscellaneous Application.

5. At the time of hearing, the Ld. AR was ready to argue the appeal. Therefore, we are taking up the appeal as well at this stage.

6. The Ld. AR submitted that the assessee could not appear before the Assessing Officer as well as before the CIT(A), due to unavoidable circumstances. Therefore, the Ld. AR requested that the matter may be remanded back to the file of the Assessing Officer for proper adjudication and the assessee be given an opportunity of hearing.

7. The Ld. DR submitted that the order dated 23/8/2019 is on merit and, therefore, the appeal could not be entertained at this stage. The Ld. DR on merit relied upon the assessment order and the order of the CIT(A).

8. We have heard both the parties and perused the material available on record. The assessee has not produced any documentary evidence before the CIT(A) as well as before the Assessing Officer. Therefore, both the authorities was not having the proper evidence before adjudicating the matter. Though the reason is that of absence of the assessee before these authorities, still in the interest of justice, it will be appropriate to remand back this issue to the file of the Assessing Officer to be decided on afresh on payment of Rs.25,000/- which should be paid to the Prime Minister's relief fund. The assessee will appear before the Assessing Officer on 20th March, 2020 and will submit the evidence. The Assessing Officer is directed to take the evidence into consideration before making any addition and give the hearing to the assessee accordingly and pass the Assessment order which deems fit in consonance with law and as per the evidence produced by the assessee. If the assessee fails to appear before the Assessing Officer, the Department is at liberty to recover the original tax amount from the assessee. In result, ITA No. 3468/DEL/2017 is partly allowed for statistical purpose.

9. In result, appeal filed by the assessee is partly allowed for statistical purpose and the Misc. Application is allowed.

Order pronounced in the Open Court on 16th MARCH, 2020.

**Sd/-
(P. MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 16/03/2020
R. N

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	16.03.2020
Date on which the typed draft is placed before the dictating Member	16.03.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	16.03.2020
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	16.03.2020
Date on which the file goes to the Head Clerk	