

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA
[Virtual Court Hearing]**

(Before Shri P.M. Jagtap, Hon'ble Vice President, Kz & Shri Satbeer Singh Godara, Hon'ble Judicial Member)

**ITA No. 150/Kol/2020
Assessment Years: 2015-16**

Benud Behari Dutt Jewellers.....Appellant
18, G.T. Road (South)
Howrah - 711 101
[PAN : AALFB 7137 JJ]

Vs.

Income Tax Officer, Ward-46(2) Kolkata.....Respondent

Appearances by:

Shri Ravi Tulsyan, C.A., appeared on behalf of the assessee.

Shri Supriyo Pal, JCIT D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : June 8th, 2020

Date of pronouncing the order : June 8th, 2020

ORDER

Per P.M. Jagtap, VP, Kz:-

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) – 14, Kolkata, (hereinafter the “Id.CIT(A)”), dt. 05/12/2019, passed *ex-parte*, whereby he dismissed the appeal of the assessee.

2. The assessee in the present case is a partnership firm which is engaged in the business of trading of jewellery. The return of income for the year under consideration was filed by the assessee on 24/09/2015 declaring its total income at NIL. In the assessment completed u/s 143(3) vide order dt. 29/12/2017, the total income of the assessee was determined by the Assessing Officer at Rs.35,98,805/- after making *interalia* addition of Rs.35,49,975/- on account of disallowance of deduction claimed for stock defalcation.

2.1. Against the order passed u/s 143(3) of the Act, an appeal was preferred by the assessee before the Id. CIT(A) and since there was no satisfactory compliance on the part of the assessee to the notices issue by him, fixing the said appeal for hearing from time to time, the Id. CIT(A) dismissed the appeal of the assessee vide his appellate order dt. 05/12/2019. Aggrieved by the order of the Id. CIT(A), the assessee has preferred this appeal before the Tribunal.

3. We have heard the arguments of both the sides and perused the relevant material available on record. As submitted by the ld. Counsel for the assessee, the appeal was fixed for hearing before the ld. CIT(A), only on three (3) occasions in a short period of 1 ½ months (45 days app.) and even though adjournments were sought by the assessee of the said hearings, the ld. CIT(A) did not consider the same favourably and dismissed the appeal of the assessee vide his impugned order passed *ex-parte*. He has also submitted that a written submission was filed by the assessee before the ld. CIT(A) on 05/12/2019 but the ld. CIT(A) did not consider the same and dismissed the appeal of the assessee for non-prosecution vide his impugned order passed on the same date i.e., 05/12/2019. He has contended that the ld. CIT(A), thus, has dismissed the appeal of the assessee vide his impugned order passed *ex-parte*, without giving proper and sufficient opportunity of being heard to the assessee and without considering the written submissions already placed on record by the assessee and this position clearly apparent from the record is not disputed even by the ld. D/R. We, therefore, deem it fair and proper and in the interest of justice to set aside this impugned order passed by the ld. CIT(A) *ex-parte* and remit the matter back to him for disposing off the appeal of the assessee afresh on merit, after considering the written submission already placed on record by the assessee and after giving one more opportunity of being heard to the assessee.

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

Order pronounced in the open court on the 8th day of June, 2020.

Sd/-
[S.S. Godara]
Judicial Member

Dated : 08.06.2020
{SC SPS}

Sd/-
[P.M. Jagtap]
Vice President

Copy of the order forwarded to:

**1. Benud Behari Dutt Jewellers
18, G.T. Road (South)
Howrah - 711 101**

2. Income Tax Officer, Ward-46(2) Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches