

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

**ITA No. 320/Kol/2020**  
Assessment Year: 2009-10

Alka Jain PAN: ACFPJ9691K	Vs.	Addl.CIT, Range- Murshidabad (W.B)
Appellant		Respondent

**ITA No. 321/Kol/2020**  
Assessment Year: 2014-15

Alka Jain PAN: PAN: ACFPJ9691K		ACIT, Cir-42, Murshidabad (W.B)
Appellant		Respondent
Date of Hearing	30.06.2020	
Date of Pronouncement	03 .07.2020	
For the Appellant	None appeared	
For the Respondent	Shri Dhruba Jyoti Roy, JCIT, ld. Sr.DR	

**ORDER**

These appeals are preferred by the assessee against the separate orders of Ld. CIT(A)-12, Kolkata dated 29-11-2019 and 29-03-2019 for the assessment years 2009-10 and 2014-15.

2. None appeared for the assessee. However, grounds of appeal, ground no. 1 reads as under:-

*“1. That on the facts and in the circumstances of the case, the ld. CIT(A) erred in passing the order ex-parte without affording reasonable opportunity of being heard.”*

3. From the grounds of appeal raised by the assessee, it is discerned that the assessee is aggrieved by *ex parte* order(s) passed by the ld. CIT(A) without going into the merits of the case/grounds of appeal.

4. It is noted that the ld. CIT(A) has passed the *ex parte* order without going into the merits of the grounds of appeal raised by the assessee. It has to be kept in mind that if the

assessee is aggrieved by the order of the AO, he has the right to file appeal before the Id. CIT(A), who is the First Appellate Authority. This right of the assessee is a statutory/vested right and the appeal so preferred by the assessee will become meaningless, if the First Appellate Authority i.e. the Id. CIT(A) does not adjudicate the grounds raised by the assessee on merits. Though the Id. CIT(A) has mentioned number of dates/days in his order when the hearing of the appeal were fixed by him and has noted that the assessee has cared to attend only on 12-05-2015 and sought adjournment on 04-05-2016 (AY 2009-10) and, thereafter, since the assessee did not bother to appear before him, resulted in dismissal of the appeal (s) *ex parte* by the Id. CIT(A) without going into the merits of the case/without considering the grounds of appeal on merits.

5. The Id. CIT(A) also noted that the assessee has neither filed the statements of facts nor grounds of appeal before him, which could have explained how the AO erred in making the addition(s). According to the Id. CIT(A), since no papers or documents have been referred and no submission in the form of written submissions has been filed by the assessee before him, it is very difficult to appreciate the grievance raised by the assessee. It is true that assessee should have filed the statement of facts and written submissions along with supporting documents to substantiate her claim if the assessee is unable to attend hearing before Id. CIT(A). I am of the opinion that assessee needs to be vigilant and by merely filing the appeal the assessee cannot expect the First Appellate Authority ( Id. CIT-A) to decide the grounds raised without any supporting materials/documents and written submissions. I note that in AY 2014-15 also the Id. CIT(A) has noted that appeal was fixed for hearing on four dates and finding that neither any one appeared on behalf of assessee nor requested for any adjournment, he dismissed the appeal preferred by the assessee. However, I note that though the Id. CIT(A) has stated to have fixed the appeals on several dates, however there is no mention about the service of notice/proof of service. So, I do not countenance the action of the Id. CIT(A) in *ex parte* dismissing the appeals. Since the Id. CIT(A) was expected to pass/adjudicate the grounds of appeal based on the records available and if necessary call for the assessment records, and then pass the order on merit. In the light of the above, I am of the opinion that since assessee's main grievance is that no proper opportunity has been given by the Id. CIT(A) to the assessee before passing the impugned orders, I am of the opinion that there is violation of natural justice. Be that as it

may be, however, assessee is also expected to be vigilant and should pursue her appeal(s) earnestly and diligently. I expect that after getting this order of the Tribunal the assessee would file the correct postal address as well as correct *e-mail id* to the Id. CIT(A) and, thereafter, pursue the appeal diligently by filing written submissions as well as documents, if so advised, in support of the claim and be present either in person or through Id.AR and explain the facts and law in support of the grounds raised by her. In the light of above discussion, the impugned orders of the Id. CIT(A) are set aside and the appeals are restored back to him ( Id. CIT-A) with a direction to adjudicate the appeal(s)/grounds of appeal on merits after hearing the assessee/going through the submissions/documents and Id. CIT(A) to pass a speaking order.

6. In the result, the both appeals of assessee are allowed for statistical purpose.

Order is pronounced in the open court on 3rd July 2020.

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

Dated :, 3rd July 2020

\*\*PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –Smt. Alka Jain Aurangabad, Murshidabad-742201 (WB)
2. Respondent –Addl. CIT-Range/ACIT-Murshidabad-742101 (WB).
3. CIT(A)-4, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar