

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA
[Before Shri J. Sudhakar Reddy, Hon'ble Accountant Member &
Smt. Madhumita Roy, Hon'ble Judicial Member]**

[Through Virtual Court]

**ITA No. 760/Kol/2018
Assessment Year: 2011-12**

S. Subramanian.....Appellant
C/o. Swapan Ghosh, No. 1, Netaji Road,
Aberdeen Bazar, Port Blair,
A & N Islands - 744 101.
[PAN : ALHPS 2356 M]

D.C.IT, Port Blair.....Respondent
A & N, Port Blair, MB-210,
Shadipur - 744 101.

Appearances by:

None appearing on behalf of the Assessee
Shri Supriyo Pal, Addl. CIT, appearing on behalf of the Revenue

Date of concluding the hearing : August 11, 2020

Date of pronouncing the order : August 12, 2020

ORDER

PER MADHUMITA ROY, JM

The instant appeal at the instance of the assessee is directed against the order dated 30.11.2017 passed by the Ld. CIT(A)- 1, Kolkata arising out of the order dated 18.03.2014 passed by the Ld. DCIT, Andaman & Nicobar Island, Port Blair, ITNS-51 u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for A.Y. 2011-12.

2. At the time of hearing of the instant appeal, none appeared on behalf of the assessee. Upon perusal of the records, it appears that the

appeal is time-barred by 66 days. A condonation application has also been filed explaining such delay in filing the appeal before us. It reveals that the original assessee is from Port Blair, A & N Islands. Upon receipt of the order passed by the Ld. CIT(A), the assessee appointed the tax counsel at Kolkata and could only brief him in the second week of March, 2018. The appeal was drafted and sent back to Port Blair for finalisation and signature of the assessee. However, since the assessee was diabetic, not keeping well and was under complete bed rest. In this situation it took time to complete the formalities on behalf of the assessee in filing the appeal before the Ld. Hon'ble Tribunal. The above explanation rendered by the assessee in the application for condonation of delay appears to be genuine and we thus, condone such delay.

3. It further appears that the Ld. CIT(A) finalised the issue ex-parte since the assessee did not attend the hearing though the matter was fixed on number of occasions. The Ld. CIT(A) formed an opinion that the assessee was not serious to pursue its case and, therefore, dismissed the matter in limine.

4. It is pertinent to mention that sub-section(6) of section 250 of the Act, while laying down the procedure in appeal, specifically inserted the direction upon the Commissioner Appeals to dispose of the appeal in writing and to state the points for determination, the decision thereon assigning reasons thereto meaning thereby the appeal is required to be disposed of dealing with the merit and not dismissing the same in limine, ex-parte in the garb of disposal. It is needless to mention that in the case in hand before us, the Learned

CIT(A) did not perform his duty as envisaged under the statute as explained hereinabove and hence the order impugned is not sustainable in the eyes of law.

We, therefore, keeping in view the entire aspect of the matter, in order to render effective justice find it fit and proper to set aside the issue to the file of the Learned CIT(A) with the direction upon him to decide the appeal afresh upon giving a further opportunity of being heard to the assessee and upon considering the evidence on record and also the evidence which the assessee may choose to file before him. However, we make it clear that the assessee will also cooperate in disposing of the appeal by the Learned CIT(A) without asking for any unnecessary adjournment.

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

Order Pronounced in the Open Court on 12th August, 2020.

Sd/-
(J. Sudhakar Reddy)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated: 12/08/2020
Biswajit, Sr. PS

Copy of order forwarded to:

1. S. Subramanian, C/o. Swapan Ghosh, No. 1, Netaji Road, Aberdeen Bazar, Port Blair, A & N Islands – 744 101.
2. DCIT, Port Blair.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar
ITAT, Kolkata