

आयकर अपीलिय अधीकरण, न्यायपीठ –“A” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
[Before Shri P. M. Jagtap, Vice-President and Shri A. T. Varkey, JM]

**I.T.A. No. 275/Kol/2020**  
**Assessment Year: 2013-14**

Gopal Raut (PAN:AJOPR 5338 M)	Vs.	ITO, Ward-51(1), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	19.10.2020
Date of Pronouncement	06.11.2020
For the Appellant	None
For the Respondent	Shri Dhrubajyoti Roy, JCIT

**ORDER**

**PerShri A.T. Varkey, JM:**

This is an appeal preferred by the assessee against the order of Ld.CIT(A)-15, Kolkata dated 20.06.2019 for 2013-14.

2. None appeared for the assessee. However, it is noticed that there is a delay of 116 days for filing this appeal. The assessee has filed condonation application along with an affidavit sworn in by the assessee before the Notary Public. From the contents of the affidavit, it is discerned that assessee received copy of the order of Id. CIT(A) dated 20.06.2019 on 30.08.2019. According to assessee, his son was seriously suffering from a disease which caused mental disturbance to assessee and coupled with this fact, there were political disturbance in his area which all factors contributed to the delay in filing the appeal. According to assessee, the delay caused was not intentional and prayed for condonation of delay. We find the cause to be reasonable for not preferring an appeal in time, so we condone the delay and proceed to hear the appeal. However, we note that the order of the Id. CIT(A) is an ex-parte order qua the assessee. We note that the Id. CIT(A) has observed that the appeal was fixed before him on three occasions i.e. on 31.05.2019, 10.06.2019 and 20.06.2019 and thereafter on the last date i.e. 20.06.2019 he has passed the impugned order dismissing the

appeal of the assessee, thereby confirming the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 (in short the Act).

3. After hearing the Id. D.R and having perused the material available on record, we note that the Id. CIT(A) has passed an ex- parte order qua the assessee without hearing him. According to Id. CIT(A), merely by filing Form 35, is not sufficient but the assessee has to appear and file documents to substantiate the claim raised by the assessee. Since the appeal was fixed several times and there was no sign of assessee showing any interest in pursuing the appeal, he cited few judicial precedents and dismissed the appeal of the assessee for non-prosecution. Though the Ld. CIT(A) has observed that assessee did not appear on three occasions, we note that assessee is contesting this ex parte dismissal. Though the Id. CIT(A) states that appeal was fixed thrice, however there is no proof of service of notice, therefore we are of the view that in the interest of justice, another opportunity to contest the appeal before the Ld. first appellate authority may be granted to the assessee. And not only that it should be kept in mind that assessee has a statutory right of appeal before the Ld. CIT(A), if he is aggrieved with the order of AO and if the Ld. CIT(A) dismisses the appeal not on merits, the appeal will become meaningless. Therefore, we deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the Id. CIT(A) to adjudicate the issues raised in the appeal afresh on merits. The Id DR for the Revenue did not have any objection if the matter is remitted back to the file of the Id CIT(A) for fresh adjudication. For statistical purposes the appeal of the assessee is allowed.

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

Order is pronounced in the open court on 06.11.2020.

Sd/-

(P. M. Jagtap)  
Vice President

Sd/-

(A. T. Varkey)  
Judicial Member

Dated: 06.11.2020

*SB, Sr. PS*

Copy of the order forwarded to:

1. Appellant- GopalRaut, Room No. 1173, Kankinara, PS-Jagadal, 24 Parganas (N), Kolkata
2. Respondent- ITO, Ward-51(1), Kolkata
3. The CIT(A)- , Kolkata (sent through e-mail)
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata