

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A-SMC" KOLKATA*

Before Shri Sanjay Garg, Judicial Member

आयकर अपील सं.य/ ITA No.2015/Kol/2019 Assessment Year:2006-07

Mos. Kabira Begum (L/R of Sk. Asgar Ali) 177/A, AJC Bose Road, Kolkata-700 014. [PAN No. ACZPA7559B]	<u>बनाम /</u> <u>V/s.</u>	D.C.I.T, Circle 12, Aaykar Bhawan, P-7 Chowringhee Sq., 6 th Fl., Kolkata-69.
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

Hearing through video Conferencing

अपीलार्थी की ओर से/By Appellant	None appeared
प्रत्यर्थी की ओर से/By Respondent	Mr. Jayanta Khanra, JCIT, Sr.DR
सुनवाई की तारीख/Date of Hearing	10-02-2021
घोषणा की तारीख/Date of Pronouncement	10-02-2021

आदेश /O R D E R

The present appeal has been preferred by the assessee against the order dated 13-06-2018 of the Commissioner of Income-tax (Appeals)-4, Kolkata [hereinafter referred to as 'CIT(A)'].

2. No one has put in appearance despite notice. Therefore, the impugned appeal is decided after going through the records and after hearing the Ld.DR.

3. It is noticed that the appeal filed by the assessee is time barred by 380 days. A separate application for condonation of said delay has been filed, wherein the reasons for delay in filing this appeal have been mentioned that since the assessee was dying, who was looking after the matter and since the assessee was not aware about the income-tax proceedings and, even the assessee did not receive copy of the order of the

Ld. CIT(A) and the same was later on collected from the O/o the Commissioner of income-tax (Appeals). Considering the above submissions of the assessee the delay is hereby condoned.

4. In this appeal, the assessee has raised the following grounds of appeal:-

1. *That in the facts and circumstances of the case the ld. CIT(A) erred in confirming the disallowances/additions for Long Term Capital gain amounting to Rs. 5,22,294/-*

2. *That in the facts and circumstances of the case, the ld. CIT(A) erred in confirming the disallowance/additions for preoperative exp for river view hotel amounting to Rs.8622/-.*

3. *That in the facts and circumstances of the case, the ld. CIT(A) erred in confirming the disallowance/additions for loss on sale of assets of Jasmine Brick Field amounting to Rs. 3416/-.*

4. *That in the facts and circumstances of the case, the ld. CIT(A) erred in confirming the disallowance/additions for cash payments at u/s. 40A(3) at 20% amounting to Rs. 13,057/-.*

5. *That in the facts and circumstances of the case, the appellant craves leave to add, alter, modify and/ or change grounds of appeal.*

5. At the outset, the ld. Counsel for the assessee has brought my attention to the impugned order and submitted that the same is an ex parte order. A perusal of para 3 of the impugned order of the Ld. CIT(A) reveals that the appellant had filed an application before the Ld. CITA) stating that original assessee, Sheikh Asgar Ali had died, who was looking after the matter and that the present appellant could not attend for hearing before the Ld. CIT(A). Accordingly, he (Ld. CIT-A) decided the matter by way of an ex parte order. Now, at this stage the assessee wants to contest the matter on merits.

The Ld.DR relied on the order of the ld. CIT-A.

6. After hearing the ld. DR and going through the record, I find that the impugned order of the Ld. CIT(A) is an *ex parte* order. It is pertinent to mention that the original assessment was framed in the name Sheikh Asgar Ali. However, the assessee preferred appeal before the Ld. CIT(A) being legal heir of Sheikh Asgar Ali. In my view, taking into consideration of principle of natural justice, one opportunity should be granted to the assessee to present her case before the Ld. CIT(A). The impugned order of the Ld. CIT(A) is set aside and the matter is restored to the file of the Ld. CIT(A) for fresh adjudication. Needless to say that Ld. CIT(A) will provide

adequate opportunity to the assessee to present her case and thereafter, he will decide the issue(s) afresh by way of passing a speaking order in accordance with law.

The appeal of the assessee is treated as allowed for statistical purpose.

Order pronounced in open court at the close of the hearing on
Wednesday, 10th February, 2021.

Sd/-

(Sanjay Garg)
Judicial Member

Kolkata,
**PP/Sr.PS

दिनांक:- 10/02/2021 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Mos Kabira Begum (L/R of Sk. Asgar Ali) 177/A, AJC Bose Road, Kolkata-700 014.
2. प्रत्यर्थी/Respondent-The Deputy Commissioner of Income-tax, Cir-12, Aaykar Bhawan, P-7 Chowringhee Square, 6th Fl. Kolkata-69.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/ By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,कोलकाता ।