

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA
{VIRTUAL COURT HEARING}**

(Before Shri P.M. Jagtap, Hon'ble Vice-President, KZ & Shri Sanjay Garg, Hon'ble Judicial Member)

**ITA No. 453/Kol/2020
Assessment Year: 2014-15**

Monolisha Suppliers Pvt. Ltd.....Appellant
3rd & 4th Floor
Arcadia Centre
Premise No. 31
Dr. Ambedkar Sarani
Kolkata - 700046
[PAN : AADCM 2791 C]

Vs.

Deputy Commissioner of Income Tax, Circle-11(1), Kolkata.....Respondent

Appearances by:

None, appeared on behalf of the assessee.

Smt. Ranu Biswas, Addl. CIT, Sr. D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : August 9th, 2021

Date of pronouncing the order : August 9th, 2021

ORDER

Per P.M. Jagtap, Vice-President, KZ :-

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) - 4, Kolkata, (hereinafter the 'Id. CIT(A)'), dt. 23/01/2020, passed *ex-parte*, whereby he dismissed the appeal of the assessee for non-prosecution.

2. The assessee in the present case is a company which is mainly engaged in dealing in shares and securities as well as mutual funds through portfolio management system. The return of income for the year under consideration was filed by it on 27/09/2014, declaring total income of Rs.1,52,68,380/-. In the said return of income, profit from the purchase and sale of units of mutual funds and shares, was declared by the assessee as short term capital gain. In the assessment completed u/s 143(3) of the Act vide order dt. 29/09/2016, the said profit of Rs.24,84,101/- declared by the assessee as short term capital gains, was treated by the Assessing Officer as business income.

3. The action of the Assessing Officer in treating the profit from purchase and sale of units of mutual funds and shares as business income instead of short term capital gain, was challenged by the assessee in the appeal filed before the Id. CIT(A) and since there was no compliance on the part of the assessee to the notices issue by him fixing the appeal for hearing on three different occasions, the Id. CIT(A) dismissed the appeal

of the assessee for non-prosecution vide his appellate order dt. 23/01/2020 passed *ex-parte*. Aggrieved by the said order, the assessee has preferred this appeal before the Tribunal.

4. At the outset, it is noted that there is a delay of 103 days on the part of the assessee in filing of this appeal before the Tribunal. In this regard, the assessee has moved an application seeking condonation of the said delay on the ground that due to sudden announcement of lockdown to control the spread of COVID-19 virus during the relevant period, the appeal could not be filed within the specified period. Keeping in view this reason given by the assessee, we are satisfied that there was sufficient cause for the delay of 103 days in filing of this appeal before the Tribunal. Even the ld. D/R has not raised any objection in this regard. The said delay is accordingly condoned.

5. At the time of hearing fixed in this case today, none has appeared on behalf of the assessee. This appeal of the assessee is, therefore, being disposed off after hearing the arguments of the ld. D/R and perusing the relevant material available on record. As pointed out by the ld. D/R, the address given by the assessee in Form No. 36 is different from the address mentioned by the ld. CIT(A) in his impugned order. She has contended that there was thus apparently a change in the address of the assessee company and since the same was not informed to the office of the ld. CIT(A), the notices of hearing were sent to the old address of the assessee. It is thus clear that the notices of hearing sent by the ld. CIT(A) to the old address of the assessee company were not served on the assessee company and the same, therefore, could not be complied with. Moreover, as pointed out by the assessee in Ground No. 2 of this appeal, the appeal filed by the assessee before the ld. CIT(A) was not disposed off on merit and this position, clearly evident from the order of the ld. CIT(A), is not disputed by the ld. D/R. As per the specific provisions contained in sub-section (6) of Section 250 of the Act, the ld. CIT(A) is required to dispose off an appeal of the assessee by an order in writing stating therein the points for determination, the decision thereon and the reasons for decision. The impugned order passed by the ld. CIT(A) clearly does not comply with these requirements. We, therefore, consider it just and proper to set aside the impugned order passed by the ld. CIT(A) *ex-parte* dismissing the appeal of the assessee for non-prosecution and remit the matter back to him for disposing off the appeal of the

assessee afresh on merits in accordance with law after giving the assessee a proper and sufficient opportunity of being heard. The assessee is directed to make due compliance before the Id. CIT(A) and extend all the possible co-operation in order to enable the Id. CIT(A) to dispose off the appeal afresh expeditiously.

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

Kolkata, the 9th day of August, 2021.

Sd/-
[Sanjay Garg]
 Judicial Member

Dated: 09.08.2021
 {SC SPS}

Copy of the order forwarded to:

1. Monolisha Suppliers Pvt. Ltd
3rd & 4th Floor
Arcadia Centre
Premise No. 31
Dr. Ambedkar Sarani
Kolkata - 700046

2. Deputy Commissioner of Income Tax, Circle-11(1), Kolkata

3. CIT(A)-
 4. CIT- ,
 5. CIT(DR), Kolkata Benches, Kolkata.

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

True copy
 By order

Assistant Registrar/DDO
 ITAT, Kolkata Benches