

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA-PATNA 'e-COURT', KOLKATA  
[Virtual Court Hearing]**

**Before Shri P.M. Jagtap, Vice-President(KZ)**

**I.T.A. No. 226/PAT/2019  
Assessment Year: 2001-2002**

**Rajeshwar Prasad,.....Appellant**  
**C/o. Nirmal & Associates,**  
**Nepali Kothi, Boring Road,**  
**Patna, Bihar-800001**  
**[PAN: AIRPP3110H]**

**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-Bettiah**

**Appearances by:**

*None, for the Appellant*

*Shri Ajay Kumar, JCIT, Sr. D.R., for the Respondent*

Date of concluding the hearing : September 08, 2021

Date of pronouncing the order : September 08, 2021

**O R D E R**

This appeal filed by the assessee is directed against the order of ld. Commissioner of Income Tax (Appeals), Muzzafarpur dated 13.06.2019 passed ex-parte, whereby he dismissed the appeal of the assessee.

2. The assessee in the present case is an individual, who is engaged in the business of dealing in cigarettes on wholesale basis under the name and style of his proprietary concern M/s. Sanjay Traders. The return of income for the year under consideration was filed by him on 31.10.2001 declaring total income of Rs.1,28,350/-. A survey under section 133A was carried out in the case of the assessee on 21.03.2001 and based on the adverse findings of the survey as well as further enquiry made during the course of the assessment proceedings, total income of the assessee was determined by the Assessing Officer at Rs.9,02,000/- after making various additions/disallowances vide order dated 24.03.2004 passed under section 143(3) of the Act.

3. Against the order passed by the Assessing Officer under section 143(3) of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals) and since there was no satisfactory compliance on the part of the assessee to the notices issued by him fixing the said appeal for hearing from time to time, the Id. CIT(Appeals) dismissed the appeal of the assessee for non-prosecution and confirmed all the additions made by the Assessing Officer vide his appellate order dated 13.06.2019. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. At the time of hearing fixed in this case today, none has appeared on behalf of the assessee. The Id. D.R., however, has fairly submitted that this matter is required to be sent back to the Id. CIT(Appeals) for deciding the same afresh. As pointed out by him from the impugned order of the Id. CIT(Appeals), even though the appeal of the assessee was fixed for hearing on several occasions right from the year 2005 to 2019, the last hearing was fixed on 03.06.2019 and a notice of the same was sent only on 24.05.2019 giving a very short time to the assessee to comply with the same. As further noted from the impugned order of the Id. CIT(Appeals), the appeal of the assessee was fixed for hearing by the Id. CIT(Appeals) earlier on 22.02.2017 and thereafter the appeal of the assessee was fixed for hearing by him finally on 03.06.2019 i.e. after a period of more than two years and that too giving a very short time to the assessee to comply with the same. It is pertinent to note that when the assessee could not appear for the hearing fixed after more than two years on 03.06.2019 apparently because of the short notice, no further opportunity was given by the Id. CIT(Appeals) of hearing to the assessee and the appeal was disposed of by him by relying on the written submissions stated to be filed by the assessee more than twelve years back on 10.01.2007. Moreover, as per the provisions of sub-section (6) of section 250, the Id. CIT(Appeals) was required to dispose of the appeal of

the assessee vide an order in writing stating the points for determination, the decision thereon and the reasons for the decision. It is observed that the impugned order passed by the Ld. CIT(A) does not comply with these requirements. Keeping in view all these relevant facts of the case, I consider it fair and proper and in the interest of justice to set aside the impugned order passed by the Id. CIT(Appeals) ex-parte and remit the matter back to him for disposing of the appeal of the assessee afresh on merit in accordance with law by passing a well discussed and well reasoned order after giving proper and sufficient opportunity of being heard to the assessee. The assessee is also directed to make due compliance before the Id. CIT(A) and extend all the possible cooperation in order to enable the Id. CIT(A) to dispose of the appeal afresh expeditiously.

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

Order pronounced in the open Court on September 08, 2021.

**Sd/-  
(P.M. Jagtap)  
Vice-President**

***Kolkata, the 8<sup>th</sup> day of September, 2021***

- Copies to :*
- (1) ***Rajeshwar Prasad,  
C/o. Nirmal & Associates,  
Nepali Kothi, Boring Road, Patna, Bihar-800001***
  - (2) ***Income Tax Officer,  
Ward- Bettiah***
  - (3) ***Commissioner of Income Tax (Appeals), Muzzafarpur,***
  - (4) ***Commissioner of Income Tax- ,***
  - (5) ***The Departmental Representative***
  - (6) ***Guard File***

*By order*

***Senior Private Secretary/DDO  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata***

***Laha/Sr. P.S.***