

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA
[Before Shri A. T. Varkey, JM & Shri Manish Borad, AM]**I.T.A. No. 607/Kol/2020**
Assessment Year: 2012-13

M/s. Utmost Tradecomm Pvt. Ltd. (PAN: AABCU5570D)	Vs.	Income-tax Officer, Ward-2(1), Kolkata
Appellant		Respondent

Date of Hearing	24.02.2022
Date of Pronouncement	28.02.2022
For the Appellant	Shri K. K. Goswami, Advocate
For the Respondent	Shri Biswanath Das, Addl. CIT

ORDER**Per Shri A. T. Varkey, JM:**

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-1, Kolkata dated 03.01.2019 for AY 2012-13.

2. At the outset, it has been brought to our notice that the appeal has been filed after delay of 639 days and condonation petition has been filed along with the affidavit of the director of assessee company which shows that the assessee came to know about the dismissal of the appeal by Ld. CIT(A) only in September, 2020; and that too while enquiring from the department as to status of their appeal. According to the assessee, since it has not received any notice from the Ld. CIT(A) informing the date of fixing of hearing it could not appear before the Ld. CIT(A) and, therefore, the impugned ex parte order was passed by Ld. CIT(A). According to the assessee, even the copy of the impugned order was not served upon the assessee and it was in the dark about the dismissal of its appeal before Ld. CIT(A) and came to know about it only in September, 2020. Therefore, taking into consideration the facts narrated (supra) in respect of cause of the delay which has been supported by an affidavit which has been sworn before a Notary Public dated 09.09.2020 by the Director and since the assessee was in the dark about both the fixing and disposal of appeal by Ld.

CIT(A), we are of the opinion that there is reasonable cause for delay being caused for filing of the instant appeal before us, so for the ends of justice, we are inclined to condone the delay and admit the appeal for hearing.

3. As noted the impugned order is an ex parte order and from the affidavit it is discernible that the assessee neither received any notice of hearing nor about the disposal of the appeal by the impugned order and only on personal enquiry in September 2020, the assessee came to know about the disposal of this appeal. Thus, according to us, there is violation of Natural Justice and it has to be borne in mind that the right of the assessee to file an appeal before Ld. CIT(A) being statutory in nature, such ex parte order not on merits would render the appeal before Ld. CIT(A) meaningless. Therefore, the order of the Ld. CIT(A) is set aside and we restore the matter back to the file of the Ld. CIT(A) and direct him to adjudicate afresh the appeal, after affording reasonable opportunity of being heard to the assessee.

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

Order is pronounced in the open court on 28th February, 2022.

Sd/-

(Manish Borad)
Accountant Member

Sd/

(Aby. T. Varkey)
Judicial Member

Dated : 28th February, 2022

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Utmost Tradecomm Pvt. Ltd., C/o, Agarwal Vishwanath & Associates, 133/1/1A, S. N. Banerjee Road, Pushkal Bhawan, 3rd floor, Kolkata-700 013.
2. Respondent – ITO, Ward-2(1), Kolkata
3. CIT(A)-1, Kolkata. (sent through e-mal)
4. PCIT , Kolkata
5. DR, ITAT, Kolkata. (sent through e-mal)

/True Copy,

By order,

Assistant Registrar