

**IN THE INCOME TAX APPELLATE TRIBUNAL "A"**  
**(Virtual Court Hearing) BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member**

**I.T.A. No.539/Kol/2020**  
Assessment Year: 2012-13

**M/s Malcom Distributors Pvt. Ltd.....Appellant**  
2A, Ganesh Chandra Avenue,  
Commerce House, 7<sup>th</sup> Floor,  
Room No.1, Kolkata-700013.  
[PAN: AAHCM7110P]

vs.

**ITO, Ward-7(1), Kolkata.....Respondent**

**Appearances by:**

Shri Manju Lata Shukla, FCA, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : December 23, 2021

Date of pronouncing the order : March 03, 2022

**Hearing through Video Conferencing**

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 16.01.2018 of the Commissioner of Income Tax (Appeals)-3, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. As per the note of the Registry, the appeal is time barred by 922 days. The assessee invited our attention to the copy of the impugned order of the Id. CIT(A) to submit that the assessee came to know about the passing of the aforesaid order only when he received appeal effect notice from the Assessing Officer, the assessee immediately filed an application to obtain certified copy of the order on 15.06.2020 which was received by the assessee in the month of September 2020, the assessee thereafter filed the present appeal on 16.10.2020. A separate affidavit reiterating the above submissions have also been filed by the assessee. The Id. counsel for the assessee has also invited our attention to the impugned assessment order to submit that the same is an ex parte order

passed u/s 144 of the Act. The ld. counsel has further submitted that the assessee did not receive any notice from the Assessing Officer, therefore, he could not participate in the assessment proceedings. The ld. counsel has further submitted that the counsel engaged by the assessee before the ld. CIT(A) appeared only once before the ld. CIT(A). Thereafter, she failed to appear before the CIT(A) and the assessee was not aware that the case of the assessee was remained unrepresented before the CIT(A). The ld. counsel for the assessee, therefore, has submitted that in the interest of justice, the assessee may be granted one opportunity to present his case before the Assessing Officer with a direction to him to decide the matter on merits.

3. The ld. DR though has relied upon the findings of the lower authorities. However, no evidence has been brought on the file by the Department that the copy of the impugned order of the CIT(A) was served upon the assessee.

In view of this, the delay in filing the present appeal is condoned and the impugned order of the ld. CIT(A) is set aside and the matter is restored to the file of the Assessing Officer for de novo assessment. Needless to say that the Assessing Officer will give proper opportunity to assessee to present his case.

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

***Kolkata, the 3<sup>rd</sup> March, 2022.***

Sd/-  
**[Rajesh Kumar]**  
**Accountant Member**

Sd/-  
**[Sanjay Garg]**  
**Judicial Member**

Dated:03.03.2022.

RS

*Copy of the order forwarded to:*

1. M/s Malcom Distributors Pvt. Ltd
2. ITO, Ward-7(1), Kolkata
3. CIT(A)-
4. CIT- ,

5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches