

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B(SMC)' BENCH, KOLKATA**

(Before Sri Manish Borad, Accountant Member & Sri Sonjoy Sarma, Judicial Member)

**I.T.A. No.: 292/Kol/2021
Assessment Year: 2015-16**

Niramoy Nursing Home.....Appellant
[PAN: AAHFN 1321 J]

Vs.

ACIT, Circle-3, Suri.....Respondent

Appearances by:

Sh. Souradeep Majumdar, Adv., appeared on behalf of the Assessee.

Sh. Nicholas Murmu, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : March 3rd, 2022

Date of pronouncing the order : May 17th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals), Burdwan [in short Id. "CIT(A)"] dated 06.06.2019 for the assessment year 2015-16 passed *ex-parte* dismissing the appeal of the assessee.

2. It is noted that there is a delay of 718 days on the part of the assessee in filing this appeal before the Tribunal. In this regard, the assessee has filed a condonation application dated 28.02.2022 seeking condonation of the delay due to lockdown as a result of COVID-19 pandemic and it revealed that the Id. counsel for the assessee did not appear on the given dates before the Id. CIT(A) which resulted an *ex-parte* order. The assessee came to know about the impugned order after long time and keeping in view the reasons given therein, we are satisfied that there was a sufficient cause for the delay of 718 days on the part of the assessee in filing this appeal before the Tribunal. Even the Id. D.R. has not raised any objection in this regard. Since the impugned order is *ex-parte* and the Id. CIT(A) has not discussed anything on merit and in the interest of justice, we condone the delay of 718 days on the part of the

assessee in filing this appeal before the Tribunal and admit the appeal for adjudication.

3. The assessee in the present case is a partnership firm, which runs a Nursing Home. It filed its return of income electronically for the year under consideration on 29.03.2016 declaring total income at Rs.11,53,540/-. In the assessment completed u/s 143(3) of the Income Tax Act, 1962 (in short the "Act") vide an order dated 29.11.2017, the total income of the assessee was determined by the Assessing Officer at Rs.33,21,011/- after making addition inter alia of Rs.26,67,471/- on account of Doctors' fees amounting to Rs.18,35,650/- and interest on capital amounting to Rs.3,31,821/- by treating the same as unexplained cash credit.

4. Against the order passed by the Assessing Officer (in short ld. "AO") under section 143(3) of the Act, an appeal was preferred by the assessee before the ld. CIT(A). During the course of appellate proceedings before the ld. CIT(A), ld. CIT(A) proceeded to dispose off the appeal of the assessee ex-parte whereby he upheld the assessment order passed by the AO.

5. Aggrieved by the order of the ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

6. Ld. Counsel for the assessee at the outset, stated that no opportunity was granted by ld. CIT(A) and also wrong facts have been narrated in the impugned order. No discussions have been made by the ld. CIT(A) on merits of the case. Ld. Counsel for the assessee prayed for providing one more opportunity to go before ld. CIT(A) for adjudication of the issue under merits.

7. Per contra, ld. D/R was fair enough to not to oppose this request.

8. We have heard the arguments of both the sides and also perused the relevant material available on record. A perusal of the impugned order passed by the ld. CIT(A) shows that proper and reasonable opportunity of being heard was not given by him to the assessee and the order of the ld. AO was upheld by him by passing a very cryptic order without stating the points for

determination, the decision thereon and the reasons for the decision as required by the provisions of sub-Section (6) of Section 250.

9. We, therefore, set aside the impugned order passed by the Id. CIT(A) and remit the matter back to him for disposing off the appeal of the assessee afresh by passing a speaking order as required by Section 250(6) after giving the assessee proper and sufficient opportunity of being heard.

10. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Kolkata, the 17th May, 2022.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 17.05.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Niramoy Nursing Home, N.H. Road, Bharsala Para, P.O. + P.S.- Rampurhat, Dist.-Birbhum, West Bengal-731 224.**
- 2. ACIT, Circle-3, Suri.**
3. CIT(A)- Burdwan.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata