

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA BENCH "B", KOLKATA**

**BEFORE SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No.290/Kol/2021  
Assessment Year: 2009-10**

Topsi Kenda C.S. Shop  Vill. & P.O. Kenda, P.S. Jamuria, Bardhaman- 714442  <b>PAN: AABFT 9317 L</b>	Vs.	ITO, Ward-1(3), Asansol
(Appellant)		(Respondent)

**Present for:**

Appellant by : Shri S.K. Tulsian, Advocate  
Respondent by : Smt. Ranu Biswas, ACIT, DR

Date of Hearing : 14.06.2022  
Date of Pronouncement : 05.09.2022

**ORDER**

**PER SONJOY SARMA, JM:**

This appeal is preferred by the assessee against the order passed by National Faceless Appeal Centre [hereinafter referred to as 'CIT'] dated 30.07.2021 passed u/s 250 of the Income-tax Act, 1961. The assessee has taken the following grounds of appeal:

*"i. That on the facts and in the circumstances of the case, the ld. CIT(A)- NFAC erred in not adjudicating the case on merit.*

*ii. That on the facts and in the circumstances of the case, the ld. CIT(A) erred in not admitting the fact that the order of the AO was not received in time and the appeal was filed within limitation period when the certified copy of the assessment order was received.*

*iii. That on the facts and in the circumstances of the case, the ld. CIT(A) did not appreciate the fact that the AO make similar addition and the disallowances during assessment year 2010-11 and the Hon'ble ITAT-A Bench Kolkata under ITA No. 1264/Kol/2016 in its order dated 13.07.2018 allowed full relief to the appellant relying on the decision of Jurisdictional Calcutta High Court in the case of CIT vs*

*Sir Ritwik Kumar Bera in ITAT 103 of 2014 GA 2127 of 2014 dated 11.06.2018 and in the case of CIT vs Alok Kumar Das in ITAT 117 of 2014 GA 2274 of 2014 dated 11.06.2018.*

*iv. The appellant craves leave to alter, amend or substitute any ground or grounds before or at the time of hearing of the appeal.”*

2. At the time of hearing, the ld. counsel for the assessee submitted that the appeal of the assessee was dismissed by the ld. CIT(A) without going into the merits of the case and as there was a delay of nearly 8 years in filing the appeal by the assessee. In this regard, assessee had filed a delay condonation petition before the ld. CIT(A). However, petition filed by the assessee for condoning the delay was dismissed in limine by the ld. CIT(A). Due to this, assessee did not get proper opportunity to address its issues before the ld. CIT(A). Therefore, the ld. AR submitted before us that this matter may be remand back to the ld. CIT(A) with the direction to decide the appeal on its merits of the case. Further, he submitted that the period in filing the appeal before the ld. CIT(A) may be condoned as there is a reasonable cause for such delay in filing the appeal by the assessee before the ld. CIT(A). The ld. AR submitted before us that they had made following prayer before the ld. CIT(A) by stating following reasons which is reproduced below:

*“During the course of scrutiny proceedings, we do not have any tax professional to appear and explain our case. Sri Ajit Chakraborty, son of late Anandamoyee Chakraborty. Sole license used to look after the liquor business. During the scrutiny proceedings, Sri Ajit Chakraborty unfortunately expired and our shop remained closed for a substantial period due to family dispute, if the order of the Assessing officer is gone through, it may be found that the AO has incorporated the fact that many notices were returned by the postal authority with remarks "prop. expired, returned to sender". Smt. Mangala Chakraborty and Smt Mithu Chakraborty, wife and daughter of late Ajit Chakraborty respectively was contacted by the department and made aware of the ongoing scrutiny proceedings with a request to appear before department to explain the return of income of the firm. Being totally unaware of income tax act and law, they complied with the department innocently. Since, then, we have no idea about the fate of departmental scrutiny proceedings as we did not receive any assessment order, demand notice etc. because the shop remained closed for substantial period due to family dispute as the sole license Anandamoyee Chakraborty expired in the year 2008. Subsequently, while giving appeal effect of other assessment year where refund was raised, departmental AO noticed that there*

*was outstanding demand for AY 2009-10 and we also came to know about the fact. AO adjusted the outstanding demand. That was the first instance when came to know about the tax demand for AY 2009-10. We applied for assessment order (Copy) of application has already been submitted alongwith form 35 as well during the course of appeal (hearing) and our present A/R M/s D Majumdar & Associates received certified copy of assessment order for AY 2009-10 on 13.11.2019.”*

3. Therefore, considering the circumstances of the case, one more opportunity may be given to the assessee to appear before the ld. CIT(A) so as to decide all the issues afresh on the merits of the case. We also heard the submission of the ld. DR and he submitted before us that the order passed by the ld. CIT(A) was a reasoned order and the ld. CIT(A) rightly dismissed the condonation petition as well as appeal filed by the assessee.

4. We after hearing the rival submission of the parties and going through the material available on record and perusing the impugned order passed by ld. CIT(A) where the assessee submitted a reasonable cause for delay in filing the appeal before the ld. CIT(A) and it was happened due to the death of the sole licensee who used to look after the business affairs of assessee. Therefore, the delay was happened in filing the appeal before the ld. CIT(A).

5. We after considering the facts and circumstances of the case and after hearing both the parties, we condone the delay in filing the appeal before the ld. CIT(A) by the assessee and directed the ld. CIT(A) to decide all the issues placed before us afresh on the merits of the case and further we are of the considered view that the since the order of the ld. CIT(A) was not decided on the merits of the case and no discussion has been made on the issues involved. We in the interest of justice set aside the impugned order remit it back to the file of ld. CIT(A) deciding the issues raised before us by way of speaking order. We also direct the assessee to remain vigilant in receiving the notices of hearing of the ld. CIT(A) and should not request for any adjournment unless otherwise required for reasonable cause and should file all necessary documents so as to facilitate ld. CIT(A) for passing the order.

Needless to mention that the assessee should be given proper opportunity of being heard.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

**Order pronounced in the open court on 05.09.2022.**

**Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER**

**Sd/-  
(SONJOY SARMA)  
JUDICIAL MEMBER**

Kolkata, Dated:05.09.2022.  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Topsi Kenda C.S. Shop, Jamuria.
2. The Respondent: ITO, Ward-1(3), Kolkata.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench.

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata