

। आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 438/Kol/2022
Assessment Year: 2013-14

Sashi Bhusan Singh Poddar Court 18, Rabindra Sarani Kolkata - 700001 [PAN : AKWPS9256Q]	Vs	Income Tax Officer, Ward-13(4), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Siddharth Agarwal, Advocate
Revenue by :	Shri P.P. Barman, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 24/11/2022

घोषणा की तारीख/Date of Pronouncement: 29/11/2022

आदेश/O R D E R

PER SHRI RAJESH KUMAR, ACCOUNTANT MEMBER :

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)- 5, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 29/10/2019 for the Assessment Year 2013-14.

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon'ble Supreme Court in the case of *Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020*, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. At the outset, the Ld. Counsel for the assessee submitted that the appellate order as well as assessment were framed ex-parte and, therefore, the case of the assessee was decided without considering the merits of the case. The Ld. A.R. submitted that before the AO, the assessee has some

information/details were furnished however these could not be filed before the Ld. CIT(A). The ld. A.R also submitted that the Ld. CIT(A) has decided the appeals ex-parte as the assessee could not appear on various dates when the Ld. CIT(A) fixed this appeal for hearing. The Ld. Counsel submitted that on four occasions notices sent by the Ld. CIT(A) were not received by the assessee and, therefore, the appeal of the assessee remained unattended before the Ld. CIT(A). The ld. Counsel of the assessee prayed before the Bench that the assessee may kindly be given one more opportunity to defend its case on merit before the Ld. AO by restoring this appeal to the file of the Ld. AO as before AO also complete details/evidences could not be filed.

4. The Ld. D.R on the other hand strongly objected the prayers of the Ld. A.R. by submitting that despite several opportunities granted, the assessee did not appear and therefore the said request of the counsel of the assessee may kindly be dismissed.

5. After hearing the rival parties and perusing the material on record, we observe that the assessee's appeal was decided ex-parte when the assessee failed to turn up on the various dates fixed for hearings. Therefore, in order to meet the ends of justice, the assessee deserves to be given one more opportunity to defend its case on merits before the AO as even the AO has not decided the issues on merits. Accordingly we restore the appeal to the file of the Ld. AO for the reasons cited above with the directions to decide the same on merits by affording the assessee a reasonable opportunity of hearing. Simultaneously we also direct the assessee to cooperate in the disposal of this appeal.

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

Order pronounced in the Court on 29th November, 2022 at Kolkata.

Sd/-

(RAJESH KUMAR)
ACCOUNTANT MEMBER

Kolkata, Dated 29/11/2022

**Sd/-*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata