

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

डॉ. मनीष बोराड, लेखा सदस्य
के समक्ष
Before

DR. MANISH BORAD, ACCOUNTANT MEMBER

**I.T.A. No.: 474/KOL/2022
Assessment Year: 2012-13**

***Sandhya Singh.....Appellant
[PAN: ATDPS 4942 H]***

Vs.

ITO, Ward-47(4), Kolkata.....Respondent

Appearances by:

Sh. Subas Agarwal, Adv., appeared on behalf of the Assessee.

Sh. Vijay Kumar, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : December 14th, 2022

Date of pronouncing the order : March 6th, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals)- 14, Kolkata [in short Id. "CIT(A)"] dated 31.05.2017 arising out of the assessment order framed u/s 144/143(3) of the Act dated 11.03.2015.

2. We notice that the appeal was filed before this Tribunal on 24.08.2022 and therefore, the appeal is time barred by around 5 years. Condonation application filed by the assessee dated 22.08.2022 reads as follows:

“1. That the order was passed by the Ld CIT(A) on 31.05.2017 and neither the notices of hearing nor the order was served upon the assessee.

It is pertinent to note that the address mentioned in the order is incomplete which appears to be the reason for non-service of the notices and the order was passed.

2. That the representative of the assessee attended the office of the AO on or around 05.08.2022, it came to the knowledge of the assessee that the Ld CIT(A) has already passed the order. On request, a copy was supplied to the assessee’s representative.

3. That assessee being a household lady in the meantime the assessee was suffering from several ailments post COVID19 effect and was undergoing treatment and after she partly recovered a week back she came to know about the said order of the CIT(A) and hurriedly the appeal is prepared.

4. Your appellants humbly prays before your honour that either the instant appeal may not be treated as barred by limitation and/or the delay may please be condoned in as much there is a reasonable cause for not filing the appeal in time in view of the facts stated hereinabove.

5. That in the circumstances aforesaid, the delay in filing appeal, may please be condoned.

In the circumstances, your petitioner prays that the delay in filing appeal before this Ld. Tribunal may kindly be condoned and the appeal be heard on merits or such order/orders be passed as this Ld. Tribunal deems fit and proper.

And for this kind act out of kindness, your petitioner as in duty bound shall ever pray.”

2.1. After perusing the above petition, we find force in the reasons mentioned therein and are satisfied that the assessee was prevented for reasonable cause in filing the instant appeal within statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.

3. At the outset, ld. Counsel for the assessee submitted that in the instant appeal ld. First Appellate Authority has not recorded any specific finding on any of the issues agitated before him, the impugned order is *ex-parte* and the assessee failed to get sufficient opportunity to give the submissions and file relevant documents in support of its grounds raised before ld. CIT(A). Prayer was made to restore all the issues in the instant appeal to the ld. CIT(A) for fresh adjudication

4. Ld. D/R was fair enough in not raising any objection if the issues raised in the instant appeal is restored to ld. CIT(A).

5. We have heard rival contentions and perused the records carefully with the assistance of ld. Representatives. Sub-section 6 of section 250 mandates the ld. CIT(A) to determine the points in dispute and thereafter record the reasons in support of his conclusion on those points. A perusal of the impugned order would suggest that the ld. First Appellate Authority failed to adhere the mandate given in Section 250(6) of the Act. In order to buttress our conclusion, we deem it appropriate to take note of the finding of ld. CIT(A) which reads as under:

“This appeal has been instituted on 07.05.2015 against the Order u/s. 143(3) of the Income Tax Act, 1961 dated 11.03.2015 passed by

the ITO, Ward-47(4), Kolkata for the Assessment Year 2012-13. Notices of hearing were issued to the appellant on various occasions but on each appointed date none appeared judgement in place of the judgement of the A.O. unless it is shown that the judgement of the A.O. was biased, irrational, vindictive or capricious.

In the result, appeal filed by the appellant is dismissed.”

7. We notice that ld. CIT(A) while framing the *ex-parte* order has not dealt with the facts, nor given any reasoning for confirming the finding of ld. AO and thus, is a non-speaking order.

8. We, therefore, considering the prayer made by the ld. Counsel for the assessee and no objection being raised by ld. D/R, restore all the issues in the instant appeal to the ld. CIT(A) for fresh adjudication and to pass a speaking order after considering the submissions as well as the relevant documents to be filed by the assessee on being provided adequate opportunity and to decide in accordance with law. The assessee is directed to remain vigilant and file necessary documents, if considered, in support of its grounds of appeal and should not take adjournment, unless otherwise required for reasonable cause.

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

Kolkata, the 6th March, 2023

Sd/-
[Manish Borad]
Accountant Member

Dated: 06.03.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Sandhya Singh, 222/1B, G.T. Road, Belurmath, Howrah-711 202.**
- 2. ITO, Ward-47(4), Kolkata.**
3. CIT(A)-14, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy//

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata