

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

**Shri Sonjoy Sarma, Judicial Member
Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No. 1300/Kol/2024
Assessment Year: 2014-15**

**Sunil Kumar Daga,
26 N Basu Road, Telmarui Road,
Burdwan – 713101
[PAN: ACTPD5259R]**Appellant

vs.

**Income Tax Officer,
Ward – 1(3), Burdwan,
Aayakar Bhawan,
1st Floor Court Compound,
Burdwan - 713101** Respondent

**I.T.A. No. 1301/Kol/2024
Assessment Year: 2014-15**

**Smt. Reena Daga,
26 N Basu Road, Telmarui Road,
Burdwan – 713101
[PAN: AESPDN5051N]**Appellant

vs.

**Income Tax Officer,
Ward – 1(3), Burdwan,
Aayakar Bhawan,
1st Floor Court Compound,
Burdwan - 713101** Respondent

Appearances by:

Assessee represented by : S. Jhajaria, FCA
Department represented by : Prabir Gupta Choudhury, Addl. CIT

Date of concluding the hearing : September 05, 2024

Date of pronouncing the order : September 09, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

Both the captioned appeals filed by the two different assessees pertaining to the Assessment Year (in short 'AY') 2014-15 are directed against the impugned orders passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the Ld. Commissioner of Income Tax (Appeals), Addl/JCIT(A), Indore, dated 31.03.2024 and 28.05.2024 against the Assessment Order dated 16.12.2019 and 28.05.2014, passed under Section 143(3)/147 of the Act. Since the issues in both the appeals are common and order has been passed ex-parte against the assessee. Therefore, both the matters heard together and passed by this common orders.

2. The assessee has raised the following grounds of appeal in ITA No. 1300/Kol/2024:

- "1 *For that the order of the Ld. CIT(A) is arbitrary, illegal and bad in law.*
2. *For that the proceedings initiated u/s 147 and so continued is ab-initio- void bad in law and as such the assessment is liable to be quashed.*
3. *For that the Ld. CIT(A) erred in confirming the addition made by the AO treating the amount paid to Registered broker of National Spot Exchange Ltd. against transaction to be made by appellant amounting to Rs. 10,86,900/- u/s 68 when admittedly all evidences were filed to prove the genuineness of the transactions and the AO failed to bring any evidence on record to prove the contrary.*
4. *For that the Ld. CIT(A) erred in confirming the addition made by the AO amounting to Rs. 32,607/- u/s 69C of the I.T. Act 1961, whereas he had not any direct evidence of such expenditure against the appellant.*
5. *For that the assessee craves leave to add, alter or amend any ground before or at the time of hearing."*

2.1 The assessee has raised the following grounds of appeal in ITA No. 1301/Kol/2024:

- "1 For that the order of the Ld. CIT(A) is arbitrary, illegal and bad in law.
2. For that the proceedings initiated u/s 147 and so continued is ab-initio- void bad in law and as such the assessment is liable to be quashed.
3. For that the Ld. CIT(A) erred in confirming the addition made by the AO treating the amount paid to Registered broker of National Spot Exchange Ltd. against transaction to be made by appellant amounting to Rs. 3,65,500/- u/s 68 when admittedly all evidences were filed to prove the genuineness of the transactions and the AO failed to bring any evidence on record to prove the contrary.
4. For that the Ld. CIT(A) erred in confirming the addition made by the AO amounting to Rs. 10,965/- u/s 69C of the I.T. Act 1961, whereas he had not any direct evidence of such expenditure against the appellant.
5. For that the assessee craves leave to add, alter or amend any ground before or at the time of hearing."

3. At the outset, the Ld. AR stated that the appeal No. 1300/Kol/2024, there is a delay of 116 days in filing the appeal on the part of the assessee. In this regard, the assessee has filed a petition for condonation of such delay stating that due to renal failure, the assessee was on dialysis for long time, the appeal could not be filed in time and there was a delay of 13 days in filing the appeal by the assessee. Therefore, such delay may be condoned.

4. We after considering the petition filed by the assessee, we find that that there is a reasonable cause on the part of the assessee due to which assessee could not file the appeal in time, considering the same, we condoned the delay of 13 days in filing the appeal by the assessee.

5. Ld. Counsel further stated in both the appeals, the order passed by the Ld. CIT(A) which are ex-parte order as the assessee could not turn up before the Ld. CIT(A) in compliance to the notice issued by the Ld. CIT(A)

time to time to the above-named assessee. Therefore, both the orders had been passed ex-parte against the assessee, therefore, he prayed before the Bench that one more opportunity may be given to the assessee so that the assessee can file its necessary submission before the Ld. CIT(A) in order to substantiate its claim. On such prayer made by the AR of the assessee before the Bench, Ld. Departmental Representative does not raise any objection.

6. We after hearing the rival submission to the parties and perusing the material available on record, we find that there is a reasonable cause on the part of above named assessee(s) for non-appearance before the Ld. CIT(A) and order had been passed ex-parte against them. It is therefore, interest of natural justice and fair play it is necessary to remand back the whole issue to the file of Ld. CIT(A) with a direction to re-examine the issue afresh after affording a reasonable opportunity of being heard to the assessee. The assessee's are also directed to appear before the authority below as and when notice will be served. In terms of the above, both the appeals are allowed for statistical purposes.

7. In the result, both the appeals of the assessee's are allowed for statistical purposes.

Kolkata, the 9th September, 2024.

Sd/-
[Sanjay Awasthi]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 09.09.2024.

AK, PS

Copy of the order forwarded to:

- 1 Sunil Kumar Daga
2. Smt. Reena Daga
3. Income Tax Officer, Burdwan
4. CIT(A)-
5. CIT-
6. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches