

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

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 760/KOL/ 2015
Assessment Year: 1999-2000**

M/s. Overseas Trading & Suppliers Corporation,.....Appellant
210/1A, Rash Behari Avenue,
Kolkata-700 029
[PAN : AAAFO 9395 A]

-Vs.-

Income Tax Officer,.....Respondent
Ward-33(3), Kolkata,
10, Middleton Row,
Kolkata-700 071

Appearances by:

Shri Subash Agarwal, Advocate, for the assessee
Shri Pinaki Mukherjee, JCIT, Sr. D.R., for the Department

Nate of concluding the hearing : December 14, 2015

Date of pronouncing the order : January 06, 2016

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-9, Kolkata dated 26.02.2015, whereby he dismissed the appeal filed by the assesese before him *ex parte*.

2. The assessee in the present case is a partnership firm, which is carrying on the business as a Government Contractor. The return of income for the year under consideration filed by it on 28.09.2000 declaring total income of Rs.1,90,353/- was originally processed by the Assessing Officer under section 143(1) on 11.12.2001. Subsequently, on the basis of information made available in the assessment record for A.Y. 2001-02, the assessment for the year under consideration was reopened by the Assessing Officer and a notice under section 148 was issued by him

on 21.03.2006 after recording the reasons. In the assessment completed in pursuance of the said notice under section 143(3) read with section 147 vide an order dated 30.11.2006, capital gain arising out of the sale of two flats by the assessee was re-computed by the Assessing Officer at Rs.4,70,733/- and the same was taxed in the hands of the assessee as short-term capital gain instead of long-term capital gain.

3. Against the order passed by the Assessing Officer under section 143(3) read with section 147, an appeal was preferred by the assessee before the Id. CIT(Appeals), who dismissed the same after recording his observations as under:-

“Notice under section 250 was issued to the appellant by which date of hearing was fixed on 11.03.2013, 07.11.2013, 20.12.2013, 24.07.2014, 21.10.2014, 13.11.2014 respectively. Fresh notices were issued by which the date of hearing was fixed on 14.11.2014, 22.01.2015, 05.07.2015 and 24.02.2015 respectively. However, nobody attended on the date of hearing. Though there was some written submission found on record but the same is without any supporting documents. Therefore, the appeal is decided on merit on the basis of details/ material available on record. Since, there was no compliance during the appellate proceedings, there was no new fact/ details available for consideration. Under these circumstances, I do not find any infirmity in the AO’s order”.

4. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

5. I have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the Id. Counsel for the assessee, the appeal filed by the assessee on 15.01.2007 was earlier also taken up for hearing by the Id. CIT(Appeals) and at that time, written submissions were also filed by the assessee on 09.04.2007. He has contended that even though the Id. CIT(Appeals) in his impugned order has acknowledged this position, he has disposed of the appeal of the assessee *ex parte* without taking into consideration the written

submissions of the assessee already available on record and this position clearly evident from the relevant record has not been disputed by the Id. D.R. A copy of the written submission dated 09.04.2007 filed by the assessee before the Id. CIT(Appeals) is also placed on record before me by the Id. Counsel for the assessee and a perusal of the same shows that even though a detailed submission was made by the assessee in writing on the issues involved in his appeal on merit, the Id. CIT(Appeals) has dismissed the appeal of the assessee vide his impugned order passed *ex parte* without taking into consideration the said submissions and without giving any finding on the issues involved in the appeal of the assessee on merit. As per the provisions of sub-section (6) of section 250, the Id. CIT(Appeals) is required to pass an order disposing of the appeal of the assessee in writing by stating the points for determination, the decision thereon and the reason for the decision. The impugned order of the Id. CIT(Appeals) thus is not in accordance with the relevant provisions of law. I, therefore, set aside the same and remit the matter back to him for disposing of the appeal of the assessee afresh after giving the assessee proper and sufficient opportunity of being heard and disposing of the appeal of the assessee by passing a well reasoned and well discussed order.

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

Order pronounced in the open Court on January 06, 2016.

Sd/-

**(P.M. Jagtap)
Accountant Member**

Kolkata, the 6th day of January, 2016

Copies to : (1) ***M/s. Overseas Trading & Suppliers Corporation,
210/1A, Rash Behari Avenue,
Kolkata-700 029***

**(2) Income Tax Officer,
Ward-33(3), Kolkata,
10, Middleton Row,
Kolkata-700 071**

- (3) Commissioner of Income-tax (Appeals)-9, Kolkata
(4) Commissioner of Income Tax, Kolkata
(5) The Departmental Representative
(6) Guard File

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.