

आयकर अपीलिय अधीकरण, न्यायपीठ –“B(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B(SMC)” BENCH: KOLKATA
(समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य
[Before Shri A. T. Varkey, JM]

I.T.A. No. 642/Kol/2020
Assessment Year: 2015-16

Mahesh Kumar Sharma (PAN: AWHPS 3736 N)	Vs.	ITO, Ward-23(3), Hooghly
Appellant		Respondent

Date of Hearing (Virtual)	15.02.2021
Date of Pronouncement	19.02.2021
For the Appellant	None
For the Respondent	Shri Jayanta Khanra, JCIT, Sr. DR

ORDER

This is an appeal preferred by the Assessee against the order of Ld.CIT(A)-6, Kolkata, dated 22.10.2018 for A.Y. 2015-16.

2. I note that assessee's appeal is delayed by 732 days and the assessee has filed the condonation application. After going through the reasons, I am inclined to condone the delay and proceed to hear the appeal of the assessee.

3. Though none appeared for the assessee from the grounds of appeal I note that the assessee is aggrieved by the action of the Ld. CIT(A) in passing an ex-parte order without looking into the merits of the action of the AO. It is noted that the Ld. CIT(A) in the impugned order has stated that the notice u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as the Act) fixing the case and notes that hearing notice was issued to the address of the appellant (assessee) as found in Form No. 35 however according to him none appeared on the date of hearing (however date of first hearing

not mentioned by the Ld. CIT(A)). Thereafter, the Ld. CIT(A) notes that he again fixed the matter on 26.09.2018 and 11.10.2018. Thereafter he notes that since none appeared on these dates and none bothered to send any letter for adjournment, he was pleased to dismiss the appeal of the assessee without going into the merits of the case. I do not countenance this action of the Ld. CIT(A). The Ld. CIT(A) ought to have disposed of the appeal as per Sub-Section (6) of Section 250 of the Act. The Section 250(6) of the Act reads as under:

*(6) The order of the 4*** Commissioner (Appeals)] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*

Since the Ld. CIT(A) has not spelt out the mode of sending of notices/date of first hearing etc and the assessee's plea that he has not received the notice of hearing, therefore ground no. 1 of the assessee is allowed and I set aside the impugned order of Ld. CIT(A) and restore the appeal back to the file of Ld. CIT(A). The assessee is directed to be more diligent and to file all documents / written submission before the Ld. CIT(A) well in advance and to pursue the appeal as per law. The Ld. CIT(A) to pass the order issue-wise as per Section 250(6) of the Act and in accordance to law.

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

Order is pronounced in the open court on 19.02.2021.

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 19.02.2021

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Mahesh Kumar Sharma, 138, BPMB Sarani, 1st Floor, Bhadrakali, Shree Ramkrishna Apartment, Hooghly-712232.
2. Respondent- ITO, Ward-23(3), Hooghly.
3. The CIT(A)- 6, Kolkata (sent through e-mail)
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata