

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-5185/Del/2017  
(Assessment Year: 2008-09)**

Vistasta Estates Pvt. Ltd. 15, Dr. APJ Abdul Kalam Road, New Delhi. <b>PAN No. AACCV0862E</b>	vs	ACIT, Circle 26(1), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee by</b>		<b>Sh. Gaurav Jain, Deepika Aggarwal, CA</b>
<b>Revenue by</b>		<b>Sh. S.S. Rana, CIT DR</b>

<b>Date of Hearing</b>	<b>10.07.2018</b>
<b>Date of Pronouncement</b>	<b>10.07.2018</b>

**ORDER**

**PER K. NARSIMHA CHARY, J.M.**

Challenging the order dated 08.05.2017 in appeal no. 16/15-16 passed by the Commissioner of Income Tax (Appeals)-33, New Delhi ("Ld. CIT(A)"), assessee preferred this appeal.

2. A perusal of the impugned order, as is submitted by the Ld. AR, shows that there is failure on the part of the assessee for at least 13 occasions to enter appearance before the Ld. CIT(A) to substantiate their claim. Since the assessee failed persistently to cooperate with the disposal of the appeal after hearing the

assessee also, Ld. CIT(A) passed the impugned order based on the record.

3. It is the submission on behalf of the assessee that there was failure on the part of the Counsel engaged by the assessee and not knowing the status of the appeal before the Ld. CIT (A) the assessee could not proceed with the matter diligently. Affidavit of the assessee filed to this effect.

4. Ld. DR submits that in this matter the assessee failed to avail the opportunity provided by the first appellate authority and remand of the matter does not serve any purpose without the assessee undertaking to cooperate with the first appellate authority. He submitted that the remand of the matter will choke work before the Ld.CIT (A) and the assessee by their own conduct disentitled themselves to any relief in this matter. He prayed to dismiss the appeal in *limine*.

5. We have gone through the record in the light of the submissions on either side. The fact remains that there is failure on the part of the assessee to make representation before the Ld. CIT (A) during the period between 14.09.2012 and 08.02.2017. Though the assessee shifts the burden to the Advocate it will not absolve the assessee of the responsibility to be diligent in pursuing the matter.

6. Be that as it may, as the things stand today the impugned order is an ex-parte order and the assessee is praying for an opportunity to get the matter disposed off on merits by submitting that they are ready to cooperate with the first appellate authority. Though the Ld. DR vehemently opposed this petition the fact

remains that the assessee did not stand to gain by allowing the first appeal disposed off ex-parte. When the technicalities are pitted against the possibility of delivery of substantial justice the former must give way to the latter. The highest that would happen by remanding the matter to the Ld. CIT (A) is that a cause would be decided on merits. We deem it just and necessary to do so, however, subject to the condition of the assessee paying cost of Rs. 10,000/- to the Department. It is made clear that it is the last opportunity to the assessee.

7. Subject to the above observations the impugned order is set aside and the matter is remanded to the file of the Ld. CIT (A) for dispose afresh after giving an opportunity to the assessee of being heard.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 10.07.2018

Sd/-

**(G.D. AGRAWAL)**  
**PRESIDENT**

Dated: 10.07.2018

\*Kavita Arora

Sd/-

**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	10.07.2018
Date on which the typed draft is placed before the dictating Member	10.07.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	10.7.18
Date on which the fair order is placed before the Dictating Member for pronouncement	10.7.18
Date on which the fair order comes back to the Sr. PS/PS	11.7.18
Date on which the final order is uploaded on the website of ITAT	11.7.18
Date on which the file goes to the Bench Clerk	11.7.18
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	