

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

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member)

ITA No. 66/Kol/2018
Assessment Year: 2012-13

M/s. Rainbow Nirman Pvt. Ltd.....Appellant
3B, Wood Street
Kolkata - 700 017
[PAN : AADCR 7524 E]

Vs.

Income Tax Officer, Ward-8(3), Kolkata.....Respondent

Appearances by:

None, appeared on behalf of the assessee.

Shri R. Shyam, CIT D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : November 28th, 2018

Date of pronouncing the order : December 19th, 2018

ORDER

Per J. Sudhakar Reddy, AM :-

This is an appeal filed by the assessee directed against the order of the Learned Commissioner of Income Tax (Appeals)-13, Kolkata, (ld. CIT(A)) passed u/s. 250 of the Income Tax Act, 1961, (the 'Act'), dt. 22/11/2017, for the Assessment Year 2012-13.

2. None appeared on behalf of the assessee despite issue of notice by RPAD. There was no application moved by the assessee for adjournment either. Under the circumstances we dispose of the case *ex-parte* on merits *qua* the assessee after hearing the ld. Departmental Representative.

3. After hearing the ld. D/R and perusing the order passed by the ld. CIT(A), we find that the assessee has not appeared before the ld. CIT(A) and hence an *ex-parte* order was passed. As the ld. CIT(A) has not disposed off the case on merits, we deem it fit to restore the issue to the file of the ld. CIT(A), for fresh adjudication, in accordance with law, after giving the assessee adequate opportunity of being heard, on the grounds of natural justice, subject to the payment of cost of Rs.10,000/- (Rs. Ten Thousand Only) by the assessee in favour of Prime Minister Relief Fund, for having not appeared before the ld. CIT(A) as well as before us in this proceeding.. The CIT(A) shall verify the said payment by the assessee and thereafter proceed to dispose off the case on merits.

For this proposition to levy costs, while condoning the actions of the assessee as reasonable, we rely on the decision of the Hon'ble Bombay High Court in the case of

Vijay Vishin Meghani vs. The Deputy Commissioner of Income Tax Circle in ITA No. 493 of 2015 & 508 of 2015, dt. September 19, 2017, wherein at para 11, it has been held as follows:-

“11. We do not find that any of these decided cases have any application to the facts before us. We have imposed the costs not because the appellant was not acting bona fide but finding that even after the legal advice was obtained, the matter was decided in favour of the assessee, there was time which was consumed and in all this delay of 2984 days occurred. While condoning such delay, it is permissible for court, in its discretion, to impose costs. Eventually, the rights and equities have to be balanced. To render substantial justice and not to enrich the Revenue that the costs have been imposed. It is not, therefore, a case where the State has been allowed to retain any benefit or has been benefited by any directions. It is the Court which in its discretion has imposed this condition. We do not find any basis to alter it. The request in that behalf is refused.”

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

Kolkata, the 19th day of December, 2018.

Sd/-

[S.S. Viswanethra Ravi]

Judicial Member

Dated : 19.12.2018

{SC SPS}

Sd/-

[J. Sudhakar Reddy]

Accountant Member

Copy of the order forwarded to:

1. M/s. Rainbow Nirman Pvt. Ltd

3B, Wood Street

Kolkata – 700 017

2. Income Tax Officer, Ward-8(3), Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Benches

