

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

**Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Godara, Judicial Member**

**I.T.A. No. 1283/KOL/2017**  
Assessment Year: 2012-13

**Jagmata Commerce Pvt. Ltd.....Appellant**  
**[PAN : AADCJ 0568 Q]**

**I.T.O, Ward - 13(2), Kolkata.....Respondent**

**Appearances by:**

*None appeared on behalf of the Appellant.*

*Shri A. K. Nayak, CIT(DR), appeared on behalf of the Respondent..*

Date of concluding the hearing : December 12, 2018

Date of pronouncing the order : January 16, 2019

**ORDER**

**Per J. Sudhakar Reddy, Accountant Member :-**

This is an appeal filed by the assessee directed against the order of the Learned Commissioner of Income Tax (Appeals)-5, Kolkata, (ld. CIT(A)) passed u/s. 144 of the Income Tax Act, 1961, (the 'Act'), dt. 24/10/2016, 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 and *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 16<sup>th</sup> January, 2019.***

Sd/-  
**[S.S. Godara]**  
Judicial Member

Sd/-  
**[J. Sudhakar Reddy]**  
Accountant Member

Dated : 16.01.2019  
RS, SPS

*Copy of the order forwarded to:*

1. ***Jagmata Commerce Pvt. Ltd., 128, Salkia School, Howrah-711106.***
2. ***ITO, Ward-15(4), 110, Shantipally, E.M. By-Pass, Kolkata.***
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

True copy

By order

Assistant Registrar, Kolkata Benches