

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 529/VIZ/2018  
(Asst. Year : 2012-13)**

Adimulam Harivardhan, vs. ITO, Ward-2(2),  
S/o Late A. Narayana Rao, Rajahmundry.  
Prop. M/s. Murali Krishna  
Enterprises, D.No. 29-33-6,  
Devi Chowk, Rajahmundry.

PAN No. ATJPA 8637 M  
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.  
Department By : Smt. Suman Malik – Sr.DR  
Date of hearing : 16/04/2019.  
Date of pronouncement : 30/04/2019.

**ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-12, Hyderabad, dated 18/07/2018 for the Assessment Year 2012-13.

**2.** There is a delay of one day in filing this appeal. The assessee has filed an affidavit. We have gone through the affidavit and find that there is a sufficient cause to condone the delay. Accordingly, delay is condoned.

**3.** Facts of the case, in brief, are that the assessee is the proprietor of M/s. Sree Murali Krishna Enterprises, engaged in

retail trade of tiles and allied material. A survey under section 133A of the Income Tax Act, 1961 (hereinafter referred to as 'Act') was conducted on 30/06/2011 at the business premises of the assessee. Subsequently, a notice under section 148 was issued and served on the assessee. In response thereto, the assessee has filed his return of income for the year under consideration on 27/02/2015 declaring total income of Rs.19,67,460/-. After examining the material on record and information furnished, assessment was completed by the Assessing Officer under section 143(3) r.w.s. 147 of the Act on 21/12/2015 by making certain additions.

**4.** The assessee carried the matter in appeal before the Id.CIT(A). Before the Id. CIT(A), the assessee has not appeared. Ld. CIT(A) after giving as many as 08 opportunities, passed an *exparte* order by following the decision in the case of *CIT Vs. Multiplan (India) Pvt. Ltd.* [38 ITD 320 (Del.)]

**5.** On appeal before us, Id. counsel for the assessee has submitted that due to unavoidable circumstances, assessee could not appear before the Id. CIT(A) and submitted that one more opportunity should be given to the assessee as he is ready to appear before the Id. CIT(A) without fail. He further submitted that the Id. CIT(A) without adjudicating the case on merits, simply

dismissed the appeal of the assessee *ex parte* and submitted that assessee's case has to be adjudicated on merits, otherwise it will cause irreparable loss to the assessee.

**6.** Ld. Departmental Representative strongly opposed the argument of the assessee and submitted that the Id. CIT(A) has given as many as opportunities, therefore, case of the assessee cannot be sent back.

**7.** We have heard both the sides, perused the material available on record and orders of the authorities below.

**8.** In this case, assessment is completed under section 143(3) r.w.s. 147 of the Act dated 21/12/2015. Against the order of the Assessing Officer, assessee carried the matter in appeal before the Id. CIT(A). The Id. CIT(A) has given near about 08 opportunities to substantiate assessee's case before him, however, the assessee has not responded and not filed any details before the Id. CIT(A), therefore Id. CIT(A) passed *ex parte* order. It is a fact that the assessee has not appeared before the Id. CIT(A). It is also a fact that the Id. CIT(A) has given as many as opportunities to the assessee, however, instead of passing *ex parte* order, he ought to have passed the order by considering the merits of the case. Simply because non-appearance of the assessee, Id. CIT(A) has no power to decide the appeal *ex parte*. In our opinion, the

assessee should be given one more opportunity to substantiate his case on merits. Thus, we set aside the order passed by the Id.CIT(A) and remit the matter back to him to adjudicate the appeal on merits after giving affordable opportunity of hearing to the assessee. The assessee is also directed to appear before the Id. CIT(A) on the date given for hearing without fail, unless exceptional circumstances. Thus, this appeal filed by the assessee is allowed for statistical purposes.

**9.** In the result, appeal filed by the assessee is allowed for statistical purposes.

Order Pronounced in open Court on this 30<sup>th</sup> day of April, 2019.

Sd/-  
**(D.S. SUNDER SINGH)**  
**Accountant Member**

sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated: 30<sup>th</sup> April, 2019.**

**vr/-**

Copy to:

1. The Assessee- Adimulam Harivardhan, S/o Late A. Narayana Rao, Prop. M/s. Murali Krishna Enterprises, D.No. 29-33-6, Devi Chowk, Rajahmundry.
2. The Revenue-ITO, Ward-2(2), Rajahmundry.
3. The Pr.CIT, Rajahmundry.
4. The CIT(A)-12, Hyderabad.
5. The D.R., Visakhapatnam.
6. Guard file.

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.