

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में ।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No. 146/RPR/2016
निर्धारण वर्ष / Assessment Year : 2012-13**

Shri Subhaschand Jain,
Prop. M/s. Suraj Jewellers.
Sadar Bazar, Raipur (C.G.)
Pin-492 001.
PAN : ACIPJ9610M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Central Circle, Raipur. (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B. Doshi
Revenue by : Smt. Anubhaa T. Goel

सुनवाई की तारीख / Date of Hearing : 14.05.2019
घोषणा की तारीख / Date of Pronouncement : 14.05.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeals)-II, Raipur (C.G.) dated 23.03.2016 for the assessment year 2012-13 as per the grounds of appeal on record.

2. At the time of hearing, the Ld. AR of the assessee appraised the Bench that the Ld. CIT(Appeals) has passed an *ex-parte* order where rights and liabilities of the parties remained to be adjudicated. The assessee could not appear before the Ld. CIT(Appeals) on various dates of hearing due to certain reasons which were beyond the control of the assessee. However, such non-appearance is not deliberate and intentional but circumstantial. The Ld. AR of the assessee prayed that in view of the welfare legislation as imbibed within the Taxing Statues, one final opportunity may be granted to the assessee so that he can present his case before the First Appellate Authority. The matter may therefore be restored to the file of the Ld. CIT(Appeals).

3. Per contra, the Ld. DR though conceded to the prayer of the Ld. AR of the assessee to the fact that the matter may be restored to the file of the Ld. CIT(Appeals) but principally objected in view of the fact that several opportunities were provided to the assessee and therefore, no further opportunity should be allowed since it will be nothing but leading to prolonged period of litigation.

4. We have perused the case records and heard the rival contentions. We observe that while giving considerable thought to the order of the Ld. CIT(Appeals) that it is an *ex-parte* order where rights and liabilities of the

parties herein on merits are yet to be determined. The Ld. CIT(Appeals) has passed an ex-parte order based on materials available on record and no sufficient or relevant documentary evidences from the assessee was examined by the Ld. CIT(Appeals). Since the assessee has not appeared before the Ld. CIT(Appeals), the documents which relates to the case on merits were not furnished by the assessee before the Ld. CIT(Appeals). It is true that several opportunities were granted to the assessee but before us, it was pleaded by the Ld. AR of the assessee that they were prevented due to the reasons which were beyond the control of the assessee and absence from the Departmental proceedings is not deliberate on the part of the assessee. The Ld. AR of the assessee prayed that the matter may be restored to the file of the Ld. CIT(Appeals) for fresh adjudication. We observe that if another opportunity is given to the assessee, the purpose of justice would be served since on merits, the matter can be adjudicated and all the relevant documentary evidences can be furnished before the Ld. CIT(Appeals) and this is in consonance with the spirit of the welfare legislation which is therein in the Taxing Statute. Furthermore, there will not be any impact on the Revenue since the matter is restored to the file of the Ld. CIT(Appeals).

5. In view of the matter, we set aside the order of the Ld. CIT(Appeals) and restore the matter to his file to adjudicate the issue on merits and at the same time, we direct the assessee to produce all the relevant

documentary evidences/ materials before the Ld. CIT(Appeals) for proper adjudication and the Ld. CIT(Appeals) shall grant reasonable opportunity of hearing to the assessee in accordance with law.

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

Order pronounced on 14th day of May, 2019.

Sd/-
MITHA LAL MEENA
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 14th May, 2019.
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-II, Raipur (C.G.)
4. The CIT, Central Circle, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.