

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.808/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Santosh Chandulal Mandlecha,
D-1/2, MIDC Exlo Point,
Ambad, Nashik-422010.

PAN : ABTPM0294Q

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-1,
Nashik.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhay Avchat
Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 02.08.2019
घोषणा की तारीख / Date of Pronouncement : 04.09.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of CIT(A)-1, Nashik dated 16.01.2017 for the Assessment Year 2012-13.

2. Without going to the grounds of appeal, at the outset, ld. Counsel for the assessee brought our attention to the order of the CIT(A) and submitted that the same was passed *ex-parte* without hearing the assessee or its representative. Explaining the reasons for non-appearance on various dates, specified by the CIT(A) in para 2 of his order, the ld. Counsel for the assessee filed an affidavit duly signed by

the assessee dated 26.07.2019. The contents of para 6 to 11 are relevant in this regard.

3. Before us, the ld. Counsel for the assessee submitted that the assessee's failure to attend the proceedings before the CIT(A) led to passing of the *ex-parte* order. The ld. Counsel further submitted that the right to filing the appeal is granted by the Statute to the assessee-taxpayers and no assessee forfeits the said right without reasonable cause. In this case, the assessee wanted to invoke the said right and paid the appeal fees in this regard conveying his seriousness of pursuing the appeal. The reasons for non-attendance before the lower authorities are due to many unavoidable reasons including that of non-cooperation of Shri S.S. Mutha, Senior Counsel for the assessee. Further, the ld. Counsel for the assessee also indicated nominal cost and submitted for grant one more opportunity before the CIT(A).

4. On the other hand, ld. DR for the Revenue relied heavily on the orders of the revenue authorities.

5. On going through the affidavit dated 26.07.2019 by Shri Santosh Chandulal Mandlecha, the assessee, we find there exist some non-cooperation at the end of assessee's earlier counsel CA Shri S.S. Mutha at Nashik. Relevant paras 6 to 13 of the affidavit are extracted as follows :-

"6. I was under impression that Mr. S. S. Mutha would appoint or suggest some senior counsel and at the same time he was under impression that I am going to appoint some other counsel. Thus there was a communication gap between us.

7. *That is why the 1st notice issued on 20/07/2016 remained to be responded because copy of the said notice was sent by me to the office of CA S S Mutha under the belief that he will attend the hearing, however, at the same time, CA S S Mutha was under impression that copy of the said notice fixing the date of hearing was sent to him for record purpose.*

8. *In response to the notice dated 17/08/2016, an application for adjournment was filed by me on 29/08/2016 through my junior accountant Mr. Ashish kumar Vaish However, the new date of hearing i.e. 08/09/2016 was given by tapal clerk of the office of CIT(A) to said accountant Mr. Ashish kumar Vaish. This aspect was not intimated to me by my said accountant Mr. Ashish kumar Vaish and no separate notice of hearing was issued. I was under bona fide impression that the application for adjournment was submitted and the next date of hearing shall be informed by a separate notice as per the customary practice.*

9. *In response to the notice issued on 24/10/2016 which was also accompanying the note on 'Direct Tax Dispute Resolution Scheme, 2016, my senior accountant Mr. Sachin Pagare attended the office of the CIT(A), however, he was told by the staff of the office of CIT(A) that the appeals where the appellants are willing to opt for the above scheme are considered for withdrawal of appeals and if we want to prosecute the appeal, we will get another notice of hearing.*

10. *As regards the notice of hearing dated 22/11/2016 fixing the date of hearing on 07/12/2016, I requested Mr. S. S. Mutha to attend the hearing. However, during the same period I was frequently out of town to attend the programmes, events, seminars and meetings of Maharashtra Chamber of Commerce as Vice- president of the same. Mr. Mutha refused to attend the hearing as power of attorney was not given to him and he was under impression that power of attorney was given to some other counsel.*

11. *It is also matter of fact that I was not in town due to above reasons and also due to my business obligations as I am proprietor of my business, and I alone have to look after entire activities of my business.*

12. *I sincerely want to pursue the appeal filed by me and the default in attending the hearing was unintentional.*

13. *I further state that presently I am facing acute financial difficulties and payment of taxes raised in the assessment order had resulted great hardship to me."*

6. On hearing both the sides on this preliminary issue, we are of the opinion that one more opportunity should be granted to the assessee considering the appealable right of appeal conferred by the Statute. Thus, the CIT(A) shall grant reasonable opportunity of being heard to the assessee before passing a speaking order. Accordingly, we order.

7. Before parting, we find that this is a fit case for awarding cost. Accordingly, we direct the assessee to deposit a sum of Rs.5,000/- as per the provisions of Rule 32A of the Income Tax (Appellate Tribunal) Rules, 1963 relating to 'award of cost'. Thus, the relevant grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced on 04th day of September, 2019.

Sd/-
(विकास अवस्थी /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(डी. करुणाकरा राव/D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 04th September, 2019.
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Nashik.
4. The CCIT-, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.