

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
[Before Shri J. Sudhakar Reddy, Accountant Member]**

**I.T.A. No. 1925/Kol/2019
Assessment Year: 2011-12**

Subrata Sen.....Appellant
[PAN: APJPS 5186 B]

Vs.

ITO, Ward-2(2), Durgapur.....Respondent

Appearances by:

Sh. Souradeep Mazumdar, Adv., appeared on behalf of the Assessee.

Sh. Jayanta Khanra, JCIT, Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : January 7th, 2020

Date of pronouncing the order : January 15th, 2020

ORDER

Per J. Sudhakar Reddy, AM :-

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals), Durgapur ['CIT(A)' for short] dated 27.09.2018 u/s 250 of the Income Tax Act, 1961 ('the Act' for short) for AY 2011-12.

2. There is an application for adjournment.
3. I reject the same as in my view this is not a fit case for grant of adjournment.
4. I have heard Sh. Souradeep Mazumdar, ld. Counsel for the assessee and Sh. Jayanta Khanra, JCIT, Sr. DR, on behalf of the Revenue.
5. There is a delay of 234 days in filing of the appeal. After perusing the application for condonation of delay and affidavit in support of the same, I condone the delay and admit the appeal.
6. The ld. AO as well as the ld. CIT(A) have passed *ex parte* orders. The assessee as well as the DR submitted that the issue may be restored to the file of the AO for fresh adjudication on grounds of violation of principles of natural justice. I do so accordingly and set aside the appeal to the file of the AO for fresh adjudication in accordance with law.
7. The assessee is further directed to pay cost of Rs.5,000/- (Rs. Five Thousand Only) in favour of Prime Minister Relief Fund, for having not appeared before the ld.

CIT(A) as well as the AO, in this proceeding. The AO shall verify the said payment by the assessee and thereafter proceed to make *de novo* assessment in accordance with law.

7.1. 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*, dtd. 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."

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

Kolkata, the 15th January, 2020.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated: 15.01.2020
Bidhan

Copy of the order forwarded to:

1. ***Subrata Sen, 8/16, Aryabhatta Road, B-Zone, Durgapur-713 205.***
2. ***ITO, Ward-2(2), Durgapur.***
3. CIT(A), Durgapur. (sent through e-mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through e-mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches