

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
(Before Sri J. Sudhakar Reddy, Hon'ble Accountant Member)**

ITA No. 1478/Kol/2019
Assessment Year: 2007-08

Shyamal Kumar Nandy.....Appellant
(L/R of Late Harendra Nath Nandy)
C/o. Gaurav Mathur, Advocate
1B, Nando Mallick Lane
Jhunjhunwala House
Kolkata - 700 006
[PAN : ABUPN 1181 C]

Vs.

Income Tax Officer, Ward-29(1), Kolkata.....Respondent

Appearances by:

None, appeared on behalf of the assessee.

Shri Jayanta Khanra, JCIT D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : February 25th, 2020

Date of pronouncing the order : February 26th, 2020

ORDER

Per J. Sudhakar Reddy, AM :-

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) - 5, Kolkata, (hereinafter the "Id.CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dt. 01/11/2018, for the Assessment Year 2007-08.

2. None appeared on behalf of the assessee. There is no petition for adjournment either. Under these circumstances, we dispose off the case *ex-parte*, on merits, *qua* the assessee after hearing the Id. Departmental Representative.

3. Heard the Id. D/R. After perusing the order passed by the Id. CIT(A), I find that the assessee has not appeared before the Id. CIT(A) and hence an *ex-parte* order was passed. The Id. CIT(A) has not disposed off the case on merits. This is not permissible under law. Hence I deem it fit to restore the issue to the file of the Id. CIT(A), for fresh adjudication, in accordance with law, after giving the assessee adequate opportunity of being heard, on the grounds of violation of principles of natural justice, subject to the payment of cost of Rs.5,000/- (Rs. Five Thousand Only) by the assessee in favour of Prime Minister Relief Fund, for having not appeared before the Id. 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 afresh, in accordance with law.

4. 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.”

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

Kolkata, the 26th day of February, 2020.

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated : 26.02.2020
{SC SPS}

Copy of the order forwarded to:

1. Shyamal Kumar Nandy
(L/R of Late Harendra Nath Nandy)
C/o. Gaurav Mathur, Advocate
1B, Nando Mallick Lane
Jhunhunwala House
Kolkata – 700 006

2. Income Tax Officer, Ward-29(1), Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches