

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'FRIDAY-A' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER  
TA.No 973/Del/2020  
Assessment Year: 2016-17**

**Vijay Kadan,  
186, Munrika Vihar,  
New Delhi-110067  
PAN-AFRPK9736R**

**Vs. ACIT-8(2),  
C.R. Building,  
I.P. Estate, ITO,  
New Delhi-110002**

(Applicant)

(Respondent)

Appellant by : Shri Piyush Kaushik, advocate  
Respondent by : Sh. Jagdish Singh Dahiya, Sr. Dr.  
  
Date of hearing : 31/07/2020  
Date of order : 31/07/2020

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

This is an appeal filed by one Sh. Vijay Kadan ("the assessee") challenging the order dated 11/02/2020 in appeal No. 3/10330/18-19, for the assessment year 2016-17 passed by the learned Commissioner of Income Tax (Appeals)-3, New Delhi ("Ld. CIT(A)").

2. At the outset it is brought to our notice by the Ld. AR that the impugned order is an ex parte order passed by the Ld. CIT(A) observing that, though reasonable number of opportunities were provided to the assessee, the assessee had chosen not to avail any of those things, nor

any written submissions were filed and therefore, Ld. CIT(A) drew an inference that the assessee was not keen to pursue the appeal and no material/augments were brought on record by the assessee against the assessment order.

3. Ld. AR submits that, as a matter of fact, the assessee could not enter appearance before the Ld. CIT(A) on the dates of hearing, but it was neither wanton nor wilful and was supported by valid reasons. An affidavit is sworn by the assessee to the fact that the assessee had been suffering with acute serious medical condition in the form of bronchial Asma with low FEV<sub>1</sub> (48%) and FEC (58%) ratios, breathlessness and whistling sounds in the chest caused by the patches/soft nodules in the chest. According to the assessee he is also suffering from atrophic kidney which was damaged due to the infection and shrivelled to become non-functional. All these factors, according to the assessee, prevented him from entering either personally or through an authorised representative, before the Ld. CIT(A).

4. It could be seen from the record that the impugned order was passed ex parte due to the absence of the assessee. There is no reason not to accept this sworn affidavit of the assessee wherein he had taken the health reasons for his non-prosecuting the matter before the Ld. CIT(A). Ld. DR could not controvert any of the contentions raised by the assessee in the affidavit. Further the assessee does not stand to gain by allowing the appeal to be dismissed for non-prosecution. Basing on the contents of affidavit filed by the assessee coupled with circumstances, which go uncontroverted, we are of the considered opinion that the absence of the assessee, either personally or through an authorised

representative, before the Ld. CIT(A) is supported by reasons and the same could be condoned. Since the impugned order was passed ex parte without hearing assessee, we find that the impugned order is liable to be set-aside and the matter has to go back to the file of the Ld. CIT(A) for fresh disposal according to law, after affording an opportunity to the assessee to put forth his case.

5. With this view of the matter, we set aside the impugned order and remand the matter to the file of the Ld. CIT(A) for fresh disposal after giving an opportunity to the assessee. It is made clear that the assessee shall enter appearance before the Ld. CIT(A) on all the dates of hearing and cooperate with the disposal of the matter on merits and is only a last opportunity were affording to the assessee.

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

Pronounced in open court on this the 31<sup>st</sup> day of July, 2020.

**Sd/-**  
**(G.S. PANNU)**  
**VICE PRESIDENT**

**Sd/-**  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Dated: 31/07/2020

Shashi Sekhar, Sr. P.S.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI