

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No. 1462/H/2019 Assessment Year: 2005-06		
K. Rajesh Reddy, Hyderabad. PAN - AGLPK 7483L	Vs.	Income-tax Officer, Ward - 6(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri M.V. Prasad
Revenue by:		Shri P. Suresh
Date of hearing:		31/03/2021
Date of pronouncement:		31/03/2021

ORDER

This appeal filed by the assessee is directed against CIT(A) - 6, Hyderabad's order dated 31/05/2019 involving proceedings u/s 144 of the Income Tax Act, 1961 ; in short "the Act".

2. I notice at the outset that assessee's instant appeal suffers from 16 days delay in filing. To this effect, the assessee filed condonation petition along with an affidavit affirming, inter-alia, therein that he is not aware of the provisions of the income tax Act i.e. appeal to be filed before the ITAT within 60 days from receipt of the order from CIT(A), which caused the impugned delay in filing of

the instant appeal. Case law Collector Land Acquisition vs Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. I accordingly hold that assessee's impugned delay of 16 days is neither intentional nor deliberate but due to the circumstances beyond his control. The same stands condoned. Case is now taken up for adjudication on merits.

3. Briefly the facts of the case are that the AO received information from the Board that the assessee had incurred expenditure of Rs. 2,58,041/- through the Credit Card during the AY under consideration. Since the assessee is not assessed to income-tax, the AO issued notice u/s 142(1) calling for return of income for the AY 2005-06. As there was no response from the assessee, the AO treated the above expenditure of Rs. 2,58,041/- incurred through credit card as unexplained expenditure and treated as income of the assessee by passing order u/s 144 of the Act.

4. Against the order of the AO, the assessee preferred an appeal before the CIT(A) and contended that the AO has not given sufficient opportunity of being heard before passing the order u/s 144 of the Act.

5. The CIT(A) confirmed the order of AO by holding that “I don’t find fault with the AO in assessing Rs. 2,58,041/- being the expenditure incurred through credit card as income of the assessee u/s 69C of the Act”.

6. Aggrieved by the order of CIT(A), the assessee is in appeal before the ITAT.

7. Before me, the ld. counsel for the assessee submitted that the AO passed ex-parte order without giving proper opportunity of being heard to the assessee and the CIT(A) also confirmed the order of AO without appreciating the facts on record. He, therefore, submitted that in the interest of justice, the matter may be restored to the file of AO for deciding the issue on merits. The learned DR agreed with the aforesaid statement of the learned AR.

8. I have considered the facts of the case and the request made by the learned AR. I am of the view that justice will be served if the matter is restored to the file of AO for deciding the issue on merits. Accordingly, I hereby remit the matter back to the file of Ld. AO for de novo consideration. At the same breath, I also caution the assessee to promptly cooperate before the Ld. Revenue Authorities in their proceedings failing which the Ld. Revenue Authorities shall be at liberty to pass appropriate

order in accordance with law & merits found on the material on record.

9. In the result, assessee's appeal is treated as allowed for statistical purposes.

Pronounced in the open court on 31st March, 2021.

**Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER**

Hyderabad, Dated: 31st March, 2021.

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copy to :

1	<i>M/s K. Rajesh Reddy, D.No. 67, Lavender, L&T Serene Country, Gachibowli, Hyderabad - 500 032</i>
2	<i>ITO, Wad - 6(1), Hyderabad</i>
3	<i>CIT(A) - 6 , Hyderabad</i>
4	<i>Pr. CIT - 6, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad</i>
6	<i>Guard File.</i>