

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.- 2627/Del/ 2018
(Assessment Year: 2014-15)**

Jamaaluddin,
S/O: Chunner Ahmed,
Ward No. 7,
Rafikabadcolony,DASNA,
Gaziabad.

Vs. ITO, Ward-1 (3)
Gaziabad.

PAN No. AFAPJ5448J
Appellant

Respondent

Assessee by None
Revenue by Ms Anima, Sr. DR

Date of hearing: 22/7/2021
Pronouncement on 22/7/2021

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 02/01/2018 passed by the learned Commissioner of Income Tax (Appeals), Gaziabad ("Ld. CIT(A)"), in the case of Sh. Jamaluddin ("the assessee"), for the assessment year 2014-15, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is engaged in the business of sale/of scrap and for the assessment year 2014-15 he had

filed his return of income on 24/9/2014 declaring an income of Rs. 4,87,790/-. Assessment under section 143(3)/144 of the Income Tax Act, 1961 (for short "the Act") at an income of Rs. 68, 87, 790/-by making addition of Rs. 64 Lacs under section 69 of the Act in respect of the cash deposits/investment in saving bank account.

3. Aggrieved by such an action of the learned Assessing Officer, assessee preferred appeal before the Ld. CIT(A). Ld. CIT(A), however, observed that the assessee had not enter appearance despite several opportunities and filed applications of adjournment and without the filing any written submissions. Ld. CIT(A) concluded that for no prosecution the appeal had to be dismissed. Ld. CIT(A) referred to certain in support of her observation that for no prosecution of the appeal, the appeal of the assessee had to be dismissed. Ld. CIT(A), thereafter, referred to certain facts and basing on the observations of the learned Assessing Officer that the assessee failed to substantiate the source of cash deposits in his savings bank account, dismissed the appeal.

4. Assessee is aggrieved by such dismissal of the appeal by the Ld. CIT(A) and filed this appeal before us contending that the dismissal of a genuine appeal in ex parte manner for the absence of the assessee resulted in miscarriage of justice; and that as a matter of fact, on the last date of hearing, namely, on 21/12/2017 the learned counsel for the assessee submitted an application for adjournment by way of email, but the assessee was not informed of the next date of hearing due to which the assessee could not make any appearance, but looking at the absence of the assessee the Ld. CIT(A) reached a conclusion that the appeal was

liable to be dismissed for nonprosecution. Assessee also challenged the impugned order on merits also.

5. When the matter is called, neither the assessee nor any authorised representative entered appearance. It could be seen from the record that the notice sent to the address given in form No. 36 is returned with the endorsement of the postal servant that the addressee left. If the assessee is available in such address, such notice should have been served on the assessee. If for any reason, the assessee is not available there, it is for the assessee to make arrangements for service of such notice by furnishing the address where the assessee would be available, or to deliver it to some authorised person, or by making request to the postal department to detain the mail till the assessee claims the same. Since the assessee does not seem to have adopted any of these methods, we are the considered opinion that no time could be granted. Basing on the record we proceed to hear the counsel for Revenue and decide the matter on merits.

6. At the outset, Ld. DR submits that no doubt the impugned order is an ex parte order, but in view of the fact that persistently the assessee was not cooperating with the disposal of appeal on merits, the Ld. CIT(A) was left with no option but to proceed ex parte. She further submitted that even before this Tribunal also the assessee is exhibiting the same attitude of non-cooperation and therefore, the assessee does not deserve any lenient treatment. She, however, submits that if for any reason this Tribunal deems it just and necessary to proceed with the matter and to look into the merits of the case, in all fairness, it would be reasonable to remand issue back to the file of the Ld. CIT(A) for disposal

of the appeal on merits, because the Ld. CIT(A) could not advert to the merits of the case in the light of the submissions, if any to be made, on behalf of the assessee.

7. We have gone through the record in the light of the submissions made by the Ld. DR. No doubt, the impugned order is an ex parte order, though the Ld. CIT(A) incidentally referred to the facts of the case and to the observations of the learned Assessing Officer. The crux of grievance of the assessee is that on 21/12/2017 an adjournment application was referred by way of email, and subsequently the assessee did not receive any communication as to the next date of hearing; whereas the impugned order was passed on 02/01/2018. The impugned order shows that at the request of the assessee the adjournment was granted till 20/12/2017, but it does not speak of any adjournment application submitted by the assessee on 21 to 2017. The appeal is disposed of within a span of three months from the date of issuance of the first notice to the assessee.

8. In the circumstances, while taking into consideration the submissions made by the Ld. DR and also the grievance of the assessee in the grounds of appeal, we are of the considered opinion that the ends of Justice would be met by granting an opportunity to the assessee to put forth his case before the Ld. CIT(A) and get the matter disposed of on merits. With this view of the matter, we set aside the impugned order, and restore the appeal to the file of the Ld. CIT(A) for disposal according to law, on merits, after affording an opportunity to the assessee. It is made clear that it is the last opportunity granted to the assessee, and if

the assessee does not choose to avail the same, no further opportunity would be granted.

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

Order pronounced in the open court on this the 22nd day of July, 2021 immediately after conclusion of hearing on virtual mode.

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER
Dated: 22/7/2021.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI