



**IN THE INCOME TAX APPELLATE TRIBUNAL
VARANASI CIRCUIT BENCH, VARANASI**

[Through Virtual Hearing]

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.04/VNS/2021
Assessment Year: 2014-15

Shri Amit Singh S-52/82. Co-operative Building Mint House, Nadesar Varanasi	v.	The ITO Range 3(1) Varanasi
TAN/PAN: (Appellant)		(Respondent)

Appellant by:	Shri O. P. Shukla, Advocate		
Respondent by:	Smt Abha Kala Chanda, CIT (DR)		
Date of hearing:	10	08	2021
Date of pronouncement:	11	08	2021

ORDER

PER A.D. JAIN, V.P.:

This is assessee's appeal against the order of the Id. CIT(A), Varanasi, dated 22.02.2018, for assessment year 2014-15, taking the following grounds:

1. Because, the Ld. Commissioner of Income Tax (Appeals) was not to pass ex-party order of appeal and dismiss the appeals only on technical ground, Though the counsel of the appellant was appeared before the Commissioner of Income Tax (Appeals) for hearing of the case in other cases and has filed submissions and discussed the case, but due to non-awareness of date of hearing in this case could not discussed the case and Ld. CIT(A) has passed ex party appeal order.
2. Because the order passed by the Commissioner of Income Tax (Appeals) without considering the paper book filed by the assessee and case dismissed only on the technical ground

therefore, the order passed by the Commissioner of Income tax (Appeals.) deserves to be set-aside.

3. Because if any lack on the part of the counsel regarding appearance of the case before the Commissioner (Appeals), the appellant placed reliance on the judgment of Hon'ble Supreme court in case of Rafiqu Vs Munshi Lal 1981 (AIR) SC 1400. The Hon'ble Supreme court held that

A) It is not proper that an innocent litigant, after doing everything in his power to effectively participate in his proceedings by entrusting his case to the Advocate, should be made to suffer for the inaction, deliberate omission or misdemeanor of his agent. For whatever reason the Advocate might have absented himself from the Court, the innocent litigant could not be allowed to suffer injustice for the fault of his Advocate. [511 B] The respondent's costs should be recovered from the Advocate who absented himself from Court. [511 D] [The Court directed the appeal to be restored to its original position in the High Court and heard.]

B) The appellant also placed reliance on the judgment of Allahabad High Court in case of Subhash Malik Vs CIT and other 325 ITR. The Hon'ble Court placed reliance on the judgment of Hon'ble Supreme Court in case of West Bengal Vs Administrator Hawara Municipalities (1972) SC 749. The Hon'ble Court held that if a party had acted in a particular on wrong advise given by his local adviser he cannot be held guilty of negligence. So as to disentitle the party to plead sufficient cause u/s 5 of Limitation Act, 1963. It is also held that the word "sufficient cause receiving a liberal construction so as to advance substantial justice when no negligence for inaction nor want of bona fide is imputable to a party".

C) The Hon'ble ITAT Agra Bench also realized on the aforesaid judgment and held the same view in case of Jhansi development Authority Vs. assessee ITA NO. 22/AGR/2010.

D) The appellant also placed reliance on the judgment of Income Tax Appellate Tribunal Chennai vide ITA NO. 540 MDS/2015

E) The appellant also placed reliance on the judgment of Hon'ble ITAT Agra Bench in case of Sevak ICE and Cold

Storage Pvt. Ltd. Vs. Assessee ITA no. 457/2010 where the Hon'ble Bench Placed reliance on the judgment of Mahabri Prasad Vs CIT 172 ITR (331) (MP), Ram Lal & Sons Vs ITO 99 TTA (ASR) 63. Kripa Shankar Vs CWT 181 ITR 183 (Alld),Ganga Sahai Ram Swroop Vs ITAT 271 ITR 512 (Alid).

F) The assessee case is covered by the Judgment of Hon'ble Madhya Pradesh High Court in case of Mahabir Prasad Jain 172 ITR 331 where the court held that:

"The failure for the counsel for the assessee to appear before CIT (A) the assessee cannot be penalized. And appeal cannot be dismissed for default. Accordingly to the learned counsel the assessee cannot be made to suffer for the negligence of his counsel."

4. Because the Ld. Commissioner of Income tax (A) was not justified to confirm the addition Rs.1752135.00.

5. Because the Ld. Commissioner of Income tax (A) has dismissed the order on facts without considering the material available on record.

6. Because, the appellant craves for a right to raise any additional ground during the course of hearing of the case.

7. Because the order passed by the Ld. Commissioner of Income Tax Appeal to confirm the action of the Assessing officer is erroneous, bad in law and on facts and is liable to be deleted.

3. By virtue of the impugned order, the ld. CIT(A) has dismissed the assessee's appeal for non-prosecution, observing that the assessee is not interested in prosecuting the appeal. The ld. Counsel for the assessee, in support of Ground no.1, has submitted before us that the ld. Counsel for the assessee appeared before the ld. CIT(A) for hearing in an another case and filed submissions & discussed the case, but due to non-awareness of the date of hearing in the case under consideration, no submission relating to this case could be made and the ld. CIT(A) dismissed the appeal ex-parte qua the assessee.

4. Heard. The ld. Counsel for the assessee, as stated in Ground no.1 also, unintentionally did not put in appearance before the ld. CIT(A) in the present case, due to the reason that he was not aware that this matter was also fixed before the ld. CIT(A) on the date of hearing, although he appeared in other matters fixed on the same date before the ld. CIT(A). Moreover, the ld. CIT(A), while dismissing the appeal for non-prosecution, has not decided the appeal after discussing in detail, his reasons for agreeing with the assessment order. In this view of the matter, another opportunity of hearing requires to be given to the assessee to represent his case fully before the ld. CIT(A). Even otherwise, it is trite [‘S. Velu Palandar Vs. DCIT’ 83 ITR 683 (Mad.) and ‘Ms. Swati Pawa vs. Dy. CIT’, 175 ITD 622 (Del)] and incumbent on the ld CIT(A) to decide an appeal on merit even in the absence of any representation before them.

5. In view of the above, the matter is remitted to the file of the ld. CIT(A) to be decided afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the assessee. The assessee, no doubt, shall cooperate in the fresh proceedings before the ld. CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

6. In the result, for statistical purposes, the appeal is treated as allowed.

Order pronounced in the open Court on 11/08/2021.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:11/08/2021

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar