

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA Nos. 59 & 60/Hyd/2022
(निर्धारण वर्ष / Assessment Years: 2011-12 & 2012-13)

Kishan Naik Nenavath, Vs. Income Tax Officer,
Vikarabad Ward-1,
[PAN No. ACNPN6420G] Vikarabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Smt. S. Sandhya, AR
राजस्व द्वारा / Revenue by: Shri K.P.R.R. Murthy, DR

सुनवाई की तारीख/Date of hearing: 22/09/2022
घोषणा की तारीख/Pronouncement on: 22/09/2022

आदेश / ORDER

PER BENCH:

Aggrieved by the order(s) dated 22/08/2019 passed by the learned Commissioner of Income Tax (Appeals)-2, Hyderabad ("Ld. CIT(A)"), in the case of Kishan Naik Nenavath ("the assessee") for the assessment years 2011-12 & 2012-13, assessee preferred these appeals.

2. It could be seen from the record that there is a delay of 869 days in preferring these appeals and the reasons attributed for the delay in filing the appeals are too fold. Firstly, that the order of the Ld. CIT(A) was never served on the assessee and it is only when the bank accounts of the assessee were attached, the assessee came to know about the passing of the orders in the appeals. Secondly, assessee contends that due to the pandemic, the appeals could not be filed immediately on coming to know of the passing of the impugned order, namely, in the first week of March, 2022. Insofar as the ignorance of fact of not knowing the disposal of the appeals pleaded by the assessee is concerned, absolutely there is no reason for us not to believe the same inasmuch as the Revenue also not in a position to assert the fact of service of the impugned order on the assessee with reference to any acknowledgement. Assessee does not stand to gain by preferring the appeals with delay and at the same time, no rights are crystalised in any of the parties due to the afflux of time.

3. As a matter of fact, though the learned DR does not concede to condone the delay, there is no denial of the fact that the Hon'ble Supreme Court in the Suo Motu proceedings in the case of M.A.No. 21/2022 in M.A.No. 665/2021 in SMW(C) No.3 of 2020 by order dated 10/01/2022 held that in cases, where the limitation would have expired during the period between 15/03/2020 and 28/02/2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01/03/2022, and in the event of actual balance period of limitation remaining with effect from 01/03/2022 is greater than 90 days, that longer period shall apply.

4. In this set of circumstances, we are of the considered opinion that instead of rejecting the appeals on technical grounds, it would be just and proper to allow an opportunity to the assessee in redressal of his grievance. With this view of the matter, we are inclined to condone the delay and proceed to deal with the appeals on merits.

5. At the outset, it is the submission on behalf of the assessee that the Ld. CIT(A) disposed-of the appeals on merits and for valid reasons the assessee applied for adjournment and without disposing them of, Ld. CIT(A) looking at the absence of the assessee, while referring to the decision of the Hon'ble Apex Court in the case of CIT Vs. B.N. Bhattacharjee 10 CTR 354 observed that the expression 'prefer an appeal would mean effectively prosecuting an appeal', and inasmuch as the assessee is not appearing law does not aid such persons in slumber. Though the Ld. CIT(A) referred to the merits of the case, inasmuch as the assessee could not plead his case effectively it resulted in miscarriage of justice. In these circumstances, Learned AR prayed that an opportunity may be given to the assessee to submit their books of accounts before the Ld. CIT(A) and to prosecute the first appeal effectively.

6. Though the Learned DR vehemently opposes the request of the assessee, the fact remains that the Ld. CIT(A) himself noted in the order that the assessee filed adjournment petitions whenever there was no appearance for the assessee. Since the assessee now pleads that the assessee is ready to produce the books of accounts to effectively conduct their defence, we are of the considered opinion that the highest that would happen by affording an opportunity to the assessee would be that a cause could be decided on merits. We find force in the submission of the

Learned AR that the Assessee being an individual unfamiliar with tax laws and litigation thereunder could not prosecute his case by adhering to the timelines fixed by the Ld. CIT(A). At any rate, while setting aside the impugned orders and restoring the appeals to the file of the Ld. CIT(A), we direct the assessee to co-operate with the first appellate authority in getting the matters disposed of on merits without seeking any adjournments and the Ld. CIT(A) to take a fresh look at the matter, after affording a reasonable opportunity to the assessee of being heard. We order accordingly.

7. In the result, appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on this the 22nd day of September, 2022

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 22/09/2022

TNMM

Copy forwarded to:

1. Kishan Naik Nenavath, H.No. 2-4-73, Venkatapur Village, Vikarabad.
2. Income Tax Officer, Ward-1, Vikarabad.
3. CIT(Appeals)-2, Hyderabad.
4. Pr.CIT-2, Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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ITAT, HYDERABAD