

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 656/Hyd/2022
(निर्धारण वर्ष / Assessment Year: 2017-18)

Princes Durr Shehwar Techn
Education Wakf,
Hyderabad
[PAN No. AABTP4702F]

Assistant Commissioner of
Income Tax,
Circle-7(1),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri B. Satyanarayana Murthy, AR
राजस्व द्वारा/Revenue by: Shri N. Raja Kumar, DR

सुनवाई की तारीख/Date of hearing: 27/12/2022
घोषणा की तारीख/Pronouncement on: 27/12/2022

आदेश / ORDER

Aggrieved by the order dated 29/08/2022 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Princes Durr Shehwar Techn Education Wakf ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. This appeal is filed with a delay of twenty seven days and the reason attributed for such delay is that one of the partners of the firm representing the assessee, got married and in that event the delay in preferring the appeal has occurred and an affidavit to that effect was also

filed. Learned DR opposes the request made to condone the delay. However, having regard to the peculiarity of the circumstances and also of the facts that the highest that would happen by condoning the delay is that a cause could be decided on merits, which is always in furtherance of the interest of justice, and no rights of the parties are crystalized by afflux of time, I take a view to condone the delay and now proceed to hear the appeal itself.

3. At the outset, it is the submission on behalf of the assessee that on 29/07/2022, the learned CIT(A) issued notice under section 250 of the Income Tax Act, 1961 (for short "the Act"), fixing the next date of hearing on 15/08/2022, which happened to be a national holiday being the Independence Day. In view of this predicament, assessee filed adjournment petition on 16/08/2022, seeking adjournment for fifteen days. Learned AR submitted that subsequent to 15/08/2022, they have no information as to the next date of hearing and the learned CIT(A) without considering the adjournment petition filed by the assessee, passed the impugned order on 29/08/2022 and thereby the principles of natural justice are violated.

4. It is the submission on behalf of the Revenue that as could be seen from paragraph No. 5 of the impugned order, it is not the first and only notice issued by the learned CIT(A) on 29/07/2022, but as a matter of fact, the learned CIT(A) issued notices on 14/08/2020, 07/01/2021 and inasmuch as about two years elapsed after filing the appeal, learned CIT(A) disposed of the matter basing on the material available on record.

5. I have gone through the record in the light of the submissions made on either side. A copy of the notice dated 29/07/2022 under section 250 of the Act is produced before me. So also the copy of the adjournment request made through the portal. From the notice dated

29/07/2022, it is evident that the date of hearing was fixed on 15/08/2022, which is obviously a national holiday being Independence Day. The adjournment request made by the assessee on 16/08/2022 also reads that in view of the date of hearing being national holiday, the case may be adjourned by fifteen days.

6. It is not clear from the record that the learned CIT(A) took into consideration this request made by the assessee. Further, when the notice is served on the assessee, even in the absence of the assessee, the learned CIT(A) is empowered to dispose of the appeal, and he need not wait till the assessee chooses to appear in this matter. However, such disposal must be with reference to merits of the case. The impugned order is clear in its implication that by drawing the inference that the assessee is not interested in pursuing the appeal on merits, learned CIT(A) dismissed the same in *limine* and no attempt is made to look into the merits to find out the sustainability of the additions made by the learned Assessing Officer. The impugned order is made without reference to the contentions raised by the assessee or the material available on record to decide the sustainability of the additions. I am, therefore, of the considered opinion that it is imperative to set aside the impugned order and restore the issue to the file of learned CIT(A) for consideration of the matter on merits.

7. Learned AR submitted that subsequent to the assessment order, registration under section 12A of the Act was granted on 16/03/2020 with effect from assessment year 2018-19. Learned DR submits that as on the date of the assessment order, registration was not in existence. Such a question will be considered by the learned CIT(A) while disposing of the appeal on merits, after affording an opportunity to the assessee. With this view of the matter, I set aside the impugned order and restore the appeal to the file of learned CIT(A) for disposing the same according to

law. It is made clear to the assessee that it is the last and final opportunity to get the matter disposed of on merits.

8. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 27th day of December, 2022.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 27/12/2022

TNMM

Copy forwarded to:

1. Princes Durr Shehwar Techn Education Wakf, Venugopal & Chenoy,
Chartered Accountants, Tilak Road, Hyderabad.
2. Assistant Commissioner of Income Tax, Circle-7(1), Hyderabad.
3. The CIT(Appeals)-NFAC, Delhi.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD