

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.1176/Bang/2022
Assessment year : 2014-15

M/s. KBD Sugars & Distilleries Ltd., No.17, Sankey Road, 9 th Mile, Tumkur Road, Bengaluru – 560 020. PAN: AAACK 5851A	Vs.	The Assistant Commissioner of Income Tax, Central Circle 2(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Sharma, Advocate
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	02.02.2023
Date of Pronouncement	:	02.02.2023

ORDER

Per Padmavathy S., Accountant Member

This appeal is against the order of the CIT(Appeals)-11, Bangalore dated 1.11.2022 for the assessment year 2014-15.

2. The assessee is a company, filed its return of income for AY 2014-15 on 26.11.2014 declaring a loss of Rs.7,32,61,635. The case was selected for scrutiny and the AO completed the assessment u/s. 143(3) determining the loss of assessee at Rs.82,25,177 which was

later rectified to an income of Rs.2,73,01,000. Aggrieved, the assessee preferred an appeal before the CIT(A).

3. The CIT(A) dismissed the appeal ex parte for the reason that the assessee did not make any submissions during the appellate proceedings. The CIT(A) had recorded a finding as given below with regard to the various opportunities given to the assessee during the appellate proceedings:-

“3.0 Hearings in this case were fixed for 10.08.2022, 01.09.2022, 15.09.2022 and 20.10.2022. The notices of hearing were sent through online system and duly served upon the appellant on 02.08.2022, 12.08.2022, 06.09.2022 and 12.10.2022, respectively. The hearing notices were also duly served upon the appellant through speed post. In response to the hearing notices neither anybody appeared nor were any written submissions filed. This is also noted that prior to this too several hearing notices were issued by my predecessors, however the appellant had not responded to the same except once when it sought adjournment. Such hearings were fixed for 07/07/2017, 18/08/2017, 28/11/2017, 17/04/2018, 18/06/2018, 11/10/2018, 26/04/2019, 11/06/2019, 25/06/2019, 25/02/2020 and 08/05/2020. Considering above, the appeal is being decided on the basis of material available on record.”

4. Aggrieved, the assessee is in appeal before the Tribunal.

5. The assessee raised various grounds contending the issues on merits. The assessee also vide ground No.3 contended that the CIT(A) has passed the order ex parte. The relevant grounds reads as under:-

“3. The exparte order passed by the learned Commissioner of Income - tax [Appeals], is in grave violation of principles of natural justice, as the appellant was not afforded reasonable opportunity of being heard, consequently the impugned exparte

order passed by the learned Commissioner of Income-tax [Appeals] requires to be cancelled in the interest of justice and equity, on the facts and circumstances of the case.”

6. During the course of hearing, the Id. AR submitted that the consultant who was handling the assessee's case had some medical issues due to which he could not appear before the CIT(A) and accordingly prayed for one more opportunity to argue the case on merits before the CIT(Appeals).

7. The extract of the submissions made by the Id. AR is as given below:-

- “2. It is submitted that the said appellate order dated 01/11/2022, has been passed ex-parte and the learned Commissioner of Income-tax [Appeals] - 11, Bengaluru in the impugned order has stated that multiple notice of hearings were issued and the appellant has not responded to any of the said notice and thus, he has proceeded to decide the appeal ex-parte and confirmed the additions and disallowances made by the learned assessing officer.
3. It is submitted that the reason for not responding to the notices sent by the office of the learned Commissioner of Income-tax [Appeals] was that, the said matters were handled by our tax consultant one Sri. Jayachandra Reddy, who also appeared before the learned assessing officer in the scrutiny assessment proceedings. He was taking care off of all our tax matters and he used to appear before the learned Commissioner of Income-tax [Appeals] in all our group matters.
4. It is submitted that whenever the notices were received by the appellant the same was forwarded to the office of Sri. Jayachandra Reddy, since he was only handling the Income-tax matters of our group concerns.

5. It is submitted that unfortunately the notices sent by the appellant to the tax consultant office was never responded due to the fact that the said tax consultant i.e. Sri. Jayachandra Reddy, developed certain medical issues as he was having Parkinson disease and he was not regular in attending the office works.
6. It is submitted that due to this fact, the appellant was under a bonafide belief that the said notices were attended to and to the shock of the appellant the impugned appellate order was passed mentioning that the none of the hearing notices were not responded. When enquired about the non-appearance from the Tax Consultant, he expressed that he not regular in attending his office works and also stated that he is suffering from Parkinson disease and he was under medical care.
7. Wherefore, it is submitted that not responding to the notice of hearing sent by the office of the learned Commissioner of Income-tax [Appeals]-11, Bengaluru is neither intentional nor deliberate and which is beyond the control of the appellant and it is humbly prayed that considering the above circumstances the appellant request this Hon'ble Bench not to take any adverse view as regard to the hearing notices not been responded and take a lenient and compassionate view in this regard in the interest of justice and equity.”
8. The Id. DR did not raise any objections to the request of the Id AR for remitting the issue back to the CIT(Appeals).
9. We have heard the parties and perused the material on record. From the submissions of the Id AR it is noticed that the consultant Shri Jayachandra Reddy has some medical issues of Parkinson disease due to which he could not attend regular office work. Therefore, in the interest of justice, we remit the issue back to the CIT(A) giving one more opportunity to the assessee and direct the CIT(A) to decide the case on merits. The assessee is directed to submit all the relevant

details and cooperate with the appellate proceedings. It is ordered accordingly.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 02nd day of February, 2023.

Sd/-

Sd/-

(GEORGE GEORGE K.)
JUDICIAL MEMBER

(PADMAVATHY S.)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 02nd February, 2023.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.