



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
GIRISH AGRAWAL, ACCOUNTANT MEMBER**

S.A. No.5/CTK/2023

ITA No.33/CTK/2023

Assessment Year : 2011-12

Vivek Agarwal, C/O. Jugal Kishore Dinanat, Main Road, Rajgangpur	Vs.	ITO, Ward-1, Rourkela
PAN/GIR No.AAFPN 4306 B		
(Appellant)	..	(Respondent)

Assessee by : None

Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 17/07/2023

Date of Pronouncement : 17/07/2023

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), Sambalpur dated 20.9.2019 in Appeal No.0275/2015-16 for the assessment year 2011-12.

2. None appeared on behalf of the assessee. However, an adjournment petition is filed by the assessee on the ground that as the dealing advocate is preoccupied in preparing and filing of statutory return, he will not be in a position to appear in the hearing. Shri S.C.Mohanty, Id Sr DR appeared for the revenue. As the appeal can be disposed of in the absence of Id AR of

the assessee, we reject the adjournment petition and proceed to adjudicate the appeal.

3. The appeal is time barred by 1175 days. The assessee has filed condonation petition supported by affidavit, wherein, it is stated that the delay in filing the appeal had occurred due to the fact that the employee who received the CIT(A)'s order left the job without informing about such order. It is submitted that in May, 2019, the father of the assessee had gone operation for removal of cancerous colon surgery and thereafter, every month, the assessee had to go to Mumbai for oral chemo treatment. Besides the above, the uncle and aunty of the assessee had also met an accident on 25th 2020 and sustained injury and further the mother of the assessee also was suffering from serious knee pain and diagnosed with COVID-19. Thereafter, the assessee himself suffered from cardiac arrest and had gone operation for placing of stent. It is stated that the assessee came to know about the order passed by the Id CIT(A) on 4.12.2022 and the documents were handed over to his advocate for preparing the appeal. Same problem also had arisen in the case of the Advocate. It is submitted that the delay in filing of the appeal had occurred due to the above difficulties and therefore, the delay in filing the appeal may be condoned. The decision of Hon'ble Apex Court in suo moto writ petition (Civil) No.(s)3/2020 was referred for condonation of delay.

4. After hearing the submission of Id Sr DR and perusing the condonation petition, we are satisfied that the assessee has sufficient cause for not filing the appeal within the stipulated period. Before us also, various medical certificates in support of the illness of family members of the assessee have been placed. The Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji (1987) 167 ITR 471 has held that there can be no presumption of deliberateness or negligence or *mala fides* in case of delay, because litigants run a serious risk without any benefit by the delay. The judiciary is respected not for legalizing injustice on technical grounds but for removing injustice. In view of above, we condone the delay of 1175 days and admit the appeal for hearing.

5. Ld Sr DR supported the assessment order and the order of the Id CIT(A).

6. We have heard the submission of Id Sr DR. Perusal of the impugned order of the Id CIT(A) clearly shows that the Id CIT(A) has confirmed the addition made by the Assessing Officer on the ground that the assessee has not elaborated on the deal for which money was advanced to V.M.Coal Associates. It is observed that the deal was not finalized and the assessee was forced for refund of advance given to M/s. Kalinga Allied Industries towards supply of iron ore. In view of above, in the interest of justice, we feel it deem and proper to set aside the order of the Id CIT(A) and restore the issue to his file for fresh adjudication after allowing reasonable

opportunity of being heard to the assessee and as per law. The assessee is directed to file all such evidences, as required for adjudication of the appeal by the Id CIT(A).

7. The assessee has filed stay petition being S.A. No.5/CTK/2023 to stay the demand raised on the assessee. As we have restored the issue to the file of the Id CIT(A) while adjudicating the quantum appeal, the stay petition filed by the assessee stands dismissed.

8. In the result, Stay petition filed by the assessee is dismissed and the appeal of the assessee stands partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 17/07/2023.

Sd/-
(Girish Agrawal)
ACCOUNTANT MEMBER

Cuttack; Dated 17/07/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Vivek Agarwal, C/O. Jugal Kishore Dinanat, Main Road, Rajgangpur
2. The Respondent: , ITO WARD-1, Rourkela
3. The CIT(A)-, Sambalpur
4. Pr.CIT-, Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

sd/-
(George Mathan)
JUDICIAL MEMBER

By order

Sr.Pvt.secretary
ITAT, Cuttack