

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. 366/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Narsaiah Badala, Vs. Income Tax Officer,
Mendora, Balkonda Ward-1,
Nizamabad Nizamabad
[PAN No. AVOPB7059B]

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Mohd. Afzal, AR
राजस्व द्वारा/Revenue by: Shri A. Sitarama Rao, DR

सुनवाई की तारीख/Date of hearing: 14/08/2023
घोषणा की तारीख/Pronouncement on: 16/08/2023

आदेश / ORDER

Aggrieved by the order dated 19/12/2022 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Narsaiah Badala ("the assessee") for the assessment year 2017-18, assessee preferred this appeal with a delay of 152 days.

2. It is the case of the assessee that due to non-representation of the case by the professional, the assessment resulted in an ex-parte order, against which the assessee preferred this appeal. Even against the order of the First Appellate Authority, the professional engaged by the assessee

did not file the appeal and therefore, the assessee has to engage an Advocate in Hyderabad and that is how the delay 152 days occurred.

3. Further, at the outset, learned AR submitted that the first appellate order does not comply with the legal requirement of section 250(6) of the Income Tax Act, 1961 (for short "the Act") and, therefore, the same cannot be sustained. He submits that even in the absence of the assessee, the First Appellate Authority has to pass order stating the points for determination, the decision thereon, and the reasons for the decision. Learned AR submits that in the interest of justice, an opportunity may be granted to the assessee to effectively prosecute the appeal, by restoring the appeal to the file of the learned CIT(A).

4. Though the learned DR vehemently oppose the request of the assessee, the facts remains that the learned CIT(A) did not refer to the facts nor did he dispose of the appeal on merits. Even in the absence of the assessee, it is always open for the learned CIT(A) to deal with the matter on merits instead of dismissing the same in limine.

5. Having regard to the facts and circumstances of the case, I am of the considered opinion that the impugned order does not comply with the requirement of Section 250(6) of the Act and cannot be sustained. If the request of the learned AR is granted, affording an opportunity to the assessee to prosecute his appeal before the learned CIT(A) by submitting the evidences, the highest that would happen is that a cause could be decided on merits. When the technicalities are pitted against the delivery of substantial justice, the former must give way to the later.

6. With this view of the matter, the impugned order is set aside and the appeal is restored to the file of the learned CIT(A). I 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 learned CIT(A) to take a fresh look at the matter, after affording a reasonable opportunity to the assessee of being heard.

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

Order pronounced in the open court on this the 16th day of August, 2023.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 16/08/2023

TNMM

Copy forwarded to:

1. Narsaiah Badala, H.No. 3-65, R/O. Mendora, Balkonda, Nizamabad.
2. Income Tax Officer, Ward-1, Nizamabad.
3. Pr.CIT
4. DR, ITAT, Hyderabad.
5. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD