

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos. 07 & 08/Rjt/2022

(निर्धारण वर्ष / Assessment Years : 2016-17 & 2017-18)

Shri Harikrushna Welfare Trust 1, Swaminarayan Gurukul, National Highway Bhachau, Gujarat - 370140	बनाम/ Vs.	The ACIT (CPC) Bengaluru
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGTS6149E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri D. M. Rindani, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Ashish Kumar Pandey, Sr. DR

सुनवाई की तारीख / Date of Hearing	24/08/2023
घोषणा की तारीख /Date of Pronouncement	30/08/2023

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant two appeals at the instance of the assessee are directed against the orders both dated 16.11.2021 passed by the National Faceless Appeal Centre (NFAC), Delhi, arising out of the assessment orders dated 03.01.2018 & 25.03.2019 passed by the DCIT, CPC, Bengaluru under Section

143(1) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2016-17 & 2017-18.

2. There is delay in filing the instant appeals for 2 years 5 months & 1 year 2 months, respectively. Before the Ld. CIT(A) NFAC, the delay was not condoned in both the matters. It is the case of the assessee as submitted by the Ld. AR before us that the adjournment application was filed before the Ld. CIT(A) NFAC. However, that was not considered and ultimately final order rejecting the appeal preferred by the assessee was passed.

3. On the contrary, the Ld. DR relied upon the order passed by the Ld. CIT(A) NFAC rejecting the appeal, since, matter was fixed on three occasions and the assessee did not appear before the First Appellate Authority.

4. We have heard the respective parties and perused the materials available on record including the orders passed by the authorities below. Admittedly the Ld. CIT(A) NFAC dismissed the appeal ex parte. It is also a fact that assessee was given opportunity on three occasions but none appeared except adjournment application barring 1 or 2 occasions. However, the appellant could not ventilate his grievance before the Ld. CIT(A) NFAC as the order being an ex parte one and therefore, in order to prevent the miscarriage of justice, we would like to give a further opportunity of being heard to the appellant by the Ld. CIT(A) NFAC. We also make it clear that we are not giving any observation on the delay aspect in preferring the appeal before the Ld. CIT(A) NFAC. We set aside the issue to the file of the Ld. CIT(A) NFAC to adjudicate the same afresh upon giving opportunity of being heard to the appellant and upon considering the evidence which the appellant may choose

to file at the time of appellate proceeding. The Ld. CIT(A) NFAC will also take an independent call on the point of delay as we are not adjudicating this aspect here. Hence, the Ld. CIT(A) NFAC is directed to deal with the delay aspect and to pass order accordingly.

6. In the combined result, assessee's both appeals are allowed for statistical purposes

This Order pronounced on 30/08/2023

Sd/-

(WASEEM AHMED)

ACCOUNTANT MEMBER

Ahmedabad; Dated 30/08/2023

S. K. SINHA

True Copy

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-

(MADHUMITA ROY)

JUDICIAL MEMBER

By order/आदेश से,

Deputy/Asstt. Registrar
ITAT, Rajkot