

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**MA.No. 529/MUM/2023
[ARISING OUT OF ITA NO. 5729/MUM/2019 (A.Y: 2015-16)]**

Ramesh Durgarshi Dedhia B-81, Chinar Rafi Ahmed Didwai Road Opp. Azad Nagar, Wadala (W) Mumbai - 400031 PAN: AABPD9878L	v.	Income Tax Officer – 16(3)(3) Room No. 447, 4 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
Appellant		Respondent

Assessee Represented by	:	Shri Nishit Gandhi
Department Represented by	:	Shri Anil Sant
Date of conclusion of Hearing	:	17.11.2023
Date of Pronouncement	:	17.11.2023

ORDER

PER AMIT SHUKLA (JM)

1. By way of aforesaid Miscellaneous Application, the applicant/assessee seeks to recall order dated 23.02.2023, on the ground that the order has been passed exparte for non-attendance on behalf of the assessee.

2. In the application it has been stated that assessee is a senior citizen and non-attendance on the date of hearing is a bonafide and genuine reasons beyond the control of the applicant/assessee. It has been further stated that on 27.12.2022 when the matter was posted for hearing, the Bench did not function and the case was adjourned to 09.01.2023. It has been stated that assessee was not aware of the date of hearing on 09.01.2023 and therefore there was no appearance. Again on 09.01.2023 the case was adjourned to 30.01.2023 and on that date also no one appeared and accordingly, the case was heard after hearing Ld. DR and the appeal was decided the issue on merits, confirming the order of the Ld. CIT(A).

3. Before us, Ld. Counsel (Mr. Nishit Gandhi) submitted that assessee was not aware of the dates fixed on 09.01.2023 and 30.01.2023 and he was also not available on these two dates. Thus, he submitted that there was a reasonable and bonafide cause for non-appearance and in the interest of justice matter should be recalled and to be heard on merits.

4. We have heard the Ld. Counsel and perused the records. On a perusal of the order sheet in place, it is seen that on second date of hearing, Mr. Nishit Gandhi had appeared on 08.06.2021 and sought for

adjournment. Thereafter on eight (8) subsequent hearings, adjournments were sought by the Ld. Counsel or someone on behalf of the counsel sought for hearing. On 25.08.2022 the case was adjourned for 26.10.2022 and then on 26.10.2022 again at the request of Learned Counsel who personally appeared and matter was adjourned for 17.11.2022 in his presence. On 17.11.2022, "none" appeared on behalf of the assessee and the case was again posted for hearing on 06.12.2022. Again on that date also, there was no appearance on behalf of the assessee or by the Ld. Authorised Representative. The notice was sent through Ld. DR fixing the date for 27.12.2022. However, on that date the bench did not function accordingly, the case was adjourned for 09.01.2023. Again on 09.01.2023 "none" appeared on behalf of the assessee and the case was finally adjourned for 30.01.2023 and notice was issued through RPAD. On 30.01.2023 again no one appeared and accordingly, the case was heard and decided on merits and order was passed.

5. For the sake of ready reference, various dates of hearing fixed in the present case is tabulated hereunder: -

Number of occasions appeal posted for hearing	Date of hearing	Order sheet proceedings
--	------------------------	--------------------------------

Number of occasions appeal posted for hearing	Date of hearing	Order sheet proceedings
1.	01.04.2021	None for the assessee. Hearing is adjourned to 08.06.202. Issue Notice.
2.	08.06.2021	At request of assessee's counsel hearing is adjourned to 03.08.2021. Both parties informed.
3.	03.08.2021	Hearing is adjourned to 23.09.2021 at the request of Ld. AR. Both parties informed.
4.	23.09.2021	Hearing is adjourned to 11.11.2021 at the request of Ld.AR. Both the parties informed.
5.	11.11.2021	At the request of Assessee's counsel hearing is adjourned to 12.01.2022. Both parties informed.
6.	12.01.2022	Adjourned at the request of assessee's Ld. Representative to 22.02.2022 (Tuesday). Both parties are informed.
7.	22.02.2022	At the request of Ld. Counsel for the assessee, Hearing is adjourned to 13.04.2022. Both parties informed. Last opportunity to the assessee.
8.	13.04.2022	Adjourned to 16.06.2022 (Thursday) at the request of Assessee's Ld. Representative.
9.	16.06.2022	Adjourned to 21.07.2022 (Thursday) at the written request of assessee's Ld. Representative vide letter dated 16.06.2022. Both parties informed.
10.	21.07.2022	Adjourned to 25.08.2022 (Thursday) at the request of assessee's Ld. Representative. Both parties informed.
11.	25.08.2022	Hearing of the case is adjourned to 26.10.2022 (Wednesday) by the Bench. Both parties informed.
12.	26.10.2022	Adjourned to 17.11.2022 (Thursday) at the request of Assessee's Ld. Representative.
13.	17.11.2022	None present for the assessee. Case is adjourned to 06.12.2022 (Tuesday). Issue Notice by RPAD..
14.	06.12.2022	None present for the assessee. Case is adjourned to 27.12.2022 (Tuesday). Issue notice through DR.
15.	27.12.2022	Hearing is adjourned to 09.01.2023 (Monday) as Bench did not function.
16.	09.01.2023	None present for the assessee. Case is adjourned to 31.01.2023 (Monday). Issue Notice through RPAD.
17.	31.01.2023	None appeared for the assessee. Heard in physical hearing..

6. From the perusal of the order sheet which is also part of the record it is seen that on more than fifteen (15) occasions the matter has been adjourned at the request of the Ld. Counsel and suddenly from 17.11.2022 the counsel did not even bother to appear before the Bench even for seeking adjournment. Thereafter the bench was very lenient and granted several adjournments and even issued notice to the assessee. Finally, when no one was appearing, the Tribunal decided the appeal on merits. Once the assessee has given power of attorney to the counsel who has been authorised to represent the matter, then he has the responsibility to represent the assessee/clients before the court.

7. Before us the Ld. Counsel submitted that due to his inadvertent mistake he could not take note of the dates as he was unavailable or was travelling. The dates of hearing skip his attention, therefore, he personally requested that the appeal should be recalled, to be heard on merits, otherwise assessee will suffer irreparable loss. Thus, in the interest of justice and that appeal should not be decided against the assessee without hearing on merits. Therefore, taking a lenient view, we are recalling the order. Registry directed to fix the appeal for hearing on 12.01.2024 which was date giving by the Ld. Counsel.

8. In the result, Miscellaneous Application filed by the assessee is allowed as per above directions.

Order pronounced in the open court on 17th November, 2023.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai / Dated 17/11/2023
Giridhar, Sr.PS

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum