

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

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 1004/Coch/2022 : Assessment Year: 2016-2017

Rajasree Motors Private Limited Door No.39/3842, (55/2311) Alappat Road, Ravipuram Cochin – 682 016. [PAN:AABCR1072K]	vs.	The Income Tax Officer Ward – 2(2) Kochi.
(Appellant)		(Respondent)

Assessee by:	Shri P.M. Veeramani, CA
Revenue by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	23.11.2023
Date of Pronouncement:	23.11.2023

ORDER

Per Sanjay Arora, AM

This is an Appeal by the Assessee directed against the dismissal of its appeal contesting its assessment u/s.143(3) of the Income Tax Act, 1961 ('the Act') dated 29.12.2018 for Assessment Year (AY) 2016-17 by the Commissioner of Income Tax (Appeals), NFAC, Delhi [CIT(A)] vide its order dated 10.11.2021.

2. At the outset, it was observed by the Bench that the instant appeal, filed on 20/12/2022, is with a delay of 355 days. The assessee's, an authorized sales and service agent for Mercedes Benz cars in Kerala, case, per averments vide a sworn affidavit dated 16/12/2022 by Sri. S. Sivakumar (PAN: ADKPS8197D), Managing Director of the assessee-company, is that its office was closed due to Covid-19 pandemic for the earlier part of 2021, with its dealership cancelled and office closed in September, 2021. Further, no communication for hearing was received from the office of the Id.CIT(A), and before whom the proceedings were thus without

participation by the assessee. The assessee was accordingly not aware of the appellate proceedings nor indeed of the appellate order dated 10.11.2021, which was, as it was later found, transmitted electronically on the assessee's portal with ITBA. It was only on receipt, physically, the hearing notice for penalty proceedings u/s 271(1)(c) for the relevant year, that the assessee became aware of the passing of the appellate order on 14.12.2022. The assessee's account at the Income Tax Portal was accordingly immediately accessed and the impugned order downloaded, filing an appeal with dispatch on 20.12.2022. This explains the delay in filing the delay by 11 ½ months.

3. We find the reasons of the intermittent closure of assessee's office for the better half of 2021 and followed by complete closure of office in September, 2021, coupled with non-communication of the appellate proceedings by the office of the first appellate authority, as both reasonable and convincing. No cross examination of the deponent stands preferred by the Revenue, or otherwise any counter-affidavit furnished by it. Under the circumstances, we find the delay as justifiably explained and, accordingly, condoning the delay, admit the appeal.

4. On merits, as apparent from the mere browse of the impugned order – also referred to by us for the purpose of condonation of delay, makes it abundantly clear that there has been no communication to the assessee by the office of the Id.CIT(A). There is no reference in the impugned order to any notice of hearing issued, much less served, on the assessee. The *ex parte* order passed, though on merits, is thus without provision of due opportunity of hearing to the assessee and, thus, in violation of the principles of natural justice. Vacating the adjudication per the impugned order, we accordingly set aside the impugned order, restoring the assessee's appeal back to the file of the Id.CIT(A) for adjudication afresh after hearing the parties before us per a speaking order and in accordance with law. We decide accordingly.

5. In the result, the assessee's appeal is allowed.

Order pronounced in the open court on November 23, 2023.

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: November 23, 2023

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin