

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 26/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2021-22)

Aditya Tripathi,
Bhopal
[PAN : ACJPT2566P]

Vs. Assistant Commissioner
of Income Tax,
Central Circle-1(2),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Ashish Goyal, AR
(Through virtual mode)

राजस्व द्वारा/Revenue by: Shri R. Kumaran, DR

सुनवाई की तारीख/Date of hearing: 14/02/2024

घोषणा की तारीख/Pronouncement on: 14/02/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 20/09/2023 passed by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad ("Ld. CIT(A)"), in the case of Aditya Tripathi ("the assessee") for the assessment year 2021-22, assessee preferred this appeal with a delay of 49 days.

2. Brief facts of the case are that assessee is an individual and proprietor of M/s. Arni Infra, deriving income from business of civil contract works, filed his return of income for the assessment year 2021-22 on 15/02/2022 declaring total income of Rs.16,11,980/ -. A search and seizure operation under section 132 of the Income Tax Act, 1961 ('the Act') was conducted in the case of the assessee on 09/02/2021. Being the year of search, the return was selected for scrutiny. Learned Assessing Officer by making additions of Rs. 5,76,362/- and Rs. 1,98,720/- being cash and jewellery found during search, assessed the total income at Rs.23,87,062/- and completed the assessment under section 143(3) of the Act, duly initiating penalty proceedings.

3. Aggrieved, assessee preferred appeal before the learned CIT(A). Learned CIT(A), sustaining the order of learned Assessing Officer, dismissed the appeal of the assessee, stating that though various notices were issued to the assessee, the assessee failed to comply with any of such notices nor did the assessee make any written submissions and grounds of appeal are not substantiated by any proper statement or evidence.

4. At the outset, learned AR submitted that during the proceedings before the learned CIT(A), the counsel for assessee had fallen ill and that is the reason why he could not attend before the learned CIT(A) nor the information thereof could be passed on to the assessee, which resulted in ex parte order. He submitted that precisely this is the reason why, this appeal was also filed with a delay of 49 days. Learned AR further submitted that the assessee has got good case to be presented, but it is only because of the medical inconvenience of his counsel, the appeal was disposed of ex

parte and by such ex parte proceedings, assessee does not stand to gain. He submitted that given an opportunity, assessee is ready to present all the evidences before the learned CIT(A) and pursue the appeal diligently and on that ground, he prayed for an opportunity in the interest of justice.

5. Though the learned DR vehemently opposed grant of another opportunity to the assessee on the ground that the learned CIT(A) granted sufficient opportunity to the assessee which the assessee failed to avail, the fact remains that the impugned order is an ex parte order and the assessee does not stand to gain by allowing the appeal to be disposed-of ex parte.

6. Considering the circumstances as a whole and taking a pragmatic view, we condone the delay and are inclined to grant an opportunity to the assessee to prosecute his case diligently before the learned CIT(A) the highest that would happen by affording such an opportunity to the assessee to prosecute his appeal before the learned CIT(A) by submitting the evidences, 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.

7. With this view of the matter, while setting aside the impugned order and restoring the appeal to the file of the learned CIT(A), we 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. We order accordingly.

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

Order pronounced in the open court on this the 14th day of February, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 14/02/2024

TNMM

Copy forwarded to:

1. Aditya Tripathi, H.No. A-1, Parsh Villa, Near Shahpura Thana Bawadia Kalan, Bhopal.
2. The ACIT, Central Circle-1(2), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD