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. 35/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Office Space Associates, Hyderabad [PAN : AACFO4922D]	Vs.	Income Tax Officer, Ward-6(1), Hyderabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri Md. Afzal, AR

राजस्व द्वारा / Revenue by: Shri M. Naveen Kumar, DR
(Appeared through virtual mode)

सुनवाई की तारीख/Date of hearing: 19/02/2024
घोषणा की तारीख/Pronouncement on: 27/02/2024

आदेश / **ORDER**

Aggrieved by the order dated 22/11/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Office Space Associates ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. At the outset, learned AR submitted that in all, there are eight partners are there in the assessee firm and all of them are non-resident Indians, except the partner in charge Kommineni Satyanarayana, who is

aged about 70 years, suffering from diabetics and hypertension and also other age related problems, and, therefore, he could not liaison with the accountant for the filing of the return of income and could not respond to the notices issued by the learned Assessing Officer. Though the assessee preferred appeal against the assessment order before the learned CIT(A) on realization by the accountant as to the passing of the assessment order, when he visited income tax office in response to a telephonic call, such an appeal was filed with a delay of 142 days.

3. He further submitted that the partner in charge could not conduct the first appellate proceedings due to his old age, sickness and also not getting any ready help from his authorized representative. Learned AR submitted that the learned CIT(A) refused to condone the delay, but proceeded to dispose of the appeal ex parte. Learned AR submitted that in these circumstances, assessee prays that given an opportunity, the assessee is ready to prove the same. He, therefore, prayed to grant an opportunity in the interest of justice.

4. Though the learned DR vehemently opposed the request of the assessee, the fact remains that the learned CIT(A) refused to condone the delay and the impugned order is only an ex parte order. Further, it is not the case of the Revenue that the assessee derived any undue advantage by remaining ex parte before the Revenue authorities.

5. Having considered the facts and circumstances of the case in a holistic manner, I am of the opinion that the plea advanced on behalf of the assessee does not appear to be suspicious because the assessee does not stand to gain by allowing the appeal disposed-of ex parte. Further,

now the assessee undertakes to co-operate with the authorities by taking diligent steps in determining his correct tax liability. I, therefore, am of the opinion that the highest that would happen by affording an opportunity to the assessee to substantiate his claims 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. With this view of the matter, keeping in view the age and health condition of the assessee, while setting aside the impugned order and restoring the appeal to the file of the learned jurisdictional Assessing Officer, I direct the assessee to co-operate with the learned Assessing Officer in getting the matter disposed of on merits, without seeking any adjournments and the learned Assessing Officer to take a fresh look at the matter, after affording a reasonable opportunity to the assessee of being heard.

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

Order pronounced in the open court on this the 27th day of February, 2024.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad, Dated: 27/02/2024

TNMM

Copy forwarded to:

1. Office Space Associates, H.No. 8-3-684/3/16, LIC Colony, Yellareddyguda, Hyderabad.
2. Income Tax Officer, Ward-6(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD