

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. 139/Hyd/2024  
(निर्धारण वर्ष / Assessment Year: 2018-19)

Sri Vijay Mining Works, Vs. Income Tax Officer,  
Shaikpet, Ward-11(1),  
Tolichowki, Hyderabad  
Hyderabad  
[PAN No. ACYFS2028L]

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.A. Sai Prasad, AR  
appeared for  
Shri T. Chaitanya Kumar, AR

राजस्व द्वारा/Revenue by: Ms. Sheetal Sarin, DR

सुनवाई की तारीख/Date of hearing: 01/04/2024  
घोषणा की तारीख/Pronouncement on: 03/04/2024

आदेश / ORDER

**PER K. NARASIMHA CHARY, J.M:**

Aggrieved by the order dated 28/09/2023 passed by the learned Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Sri Vijay Mining Works ("the assessee") for the assessment year 2018-19, assessee preferred this appeal.

2. At the outset, we noticed that assessee preferred this appeal with a delay of 81 days. In this connection, assessee filed an affidavit, stating that his father was suffering from health problem, failure of multipool organs and ultimately passed away on 29/01/2024. He submitted that in these circumstances, he could not prosecute the first appeal diligently and this is the reason for ex parte orders and the delay in filing the appeal, which is unintentional and inadvertent due to the circumstances beyond his control. There is no reason as to why this explanation of the assessee cannot be accepted. As a matter of fact, learned DR fairly concedes to condone the delay. Recording the same, we condone the delay and proceed to hear the matter on merits.

3. Learned AR submitted that during the proceedings before the learned CIT(A), since the assessee could not attend before the learned CIT(A), the appeal was disposed-of ex parte, without referring to the merits of the case. He further submitted that under section 250(6) of the Act, the learned CIT(A) shall state the points for determination, the decision thereon with reason for the decision, and it is not open for the learned CIT(A) to dismiss the appeal in limine, on the ground of non-prosecution. Learned AR finally prayed 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.

4. 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. Learned DR further submitted that the learned CIT(A) issued the notices by way of communication in the window opened by the NFAC and it is for the assessee to verify the same. According to him, when the learned CIT(A) issued notices by placing the same in the communication window that was opened by NFAC, learned CIT(A) cannot complain with the said procedure.

5. We have gone through the record in the light of the submissions made on either side. Learned CIT(A) observed that sufficient opportunity was granted to the assessee to make submissions and file documents in support of his case by fixing the date of hearing and placing them in the communication window that was opened by the NFAC. Having observed that since the assessee failed to avail the same, he had no option to proceed ex parte, the learned CIT(A) while placing reliance on the decisions of CIT vs. Multiplan India Ltd. 38 ITD 320 (Del), Estate of Late Tukoji Rao Hekar vs. CWT 223 ITR 840 (M.P) and CIT vs. B.N.Bhattachargee and another 118 ITR 461 (SC), dismissed the appeal.

6. Requirement of law under section 250 (6) of the Act is that the order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision. Even in the absence of the assessee, it is always open for the learned CIT(A) to deal with the matter on merits instead of dismissing the same in limine.

7. Having regard to the facts and circumstances of the case, we are of the considered opinion that the impugned order does not comply with the

requirement of Section 250(6) of the Act and cannot be sustained. If the request of the learned AR is granted affording an opportunity to the assessee to prosecute the appeal before the learned CIT(A) by submitting the evidences, the highest that would happen 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.

8. With this view of the matter, we set aside the impugned order and restore the appeal to the file of the learned CIT(A) to pass an order in compliance with the provisions under section 250(6) of the Act. 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.

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

Order pronounced in the open court on this the 3<sup>rd</sup> day of April, 2024.

Sd/-  
**(RAMA KANTA PANDA)**  
**VICE PRESIDENT**

Hyderabad,  
Dated: 03/04/2024

TNMM

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Sri Vijay Mining Works, Flat No. 101, E-Block, Aditya Empress Towers, Shaikpet, Golconda Post, Hyderabad.
2. The Income Tax Officer, Ward-11(1), Hyderabad.
3. The Pr.CIT-Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

TRUE COPY

ASSISTANT REGISTRAR  
ITAT, HYDERABAD