

3. Learned AR submitted that even otherwise also the learned CIT(A) could have referred to the facts and dispose of the matter on merits, so as to render effective assistance to the higher appellate fora. Learned AR submits that in the interest of justice, an opportunity may be granted to the assessee to effectively prosecute the appeal, by restoring the appeal to the file of the learned CIT(A).

4. Though the learned DR vehemently opposed the request of the assessee, the fact remains that the learned CIT(A) did not refer to the facts nor did he dispose of the appeal on merits. In the impugned order, learned CIT(A) observed that because of the absence of the assessee, he was left with no option except to confirm the order of the learned Assessing Officer, and on this premise alone, learned CIT(A) confirmed the assessment order and dismissed the appeal.

5. Requirement of law under section 250(6) of the Income Tax Act, 1961 (for short "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.

6. Having regard to the facts and circumstances of the case, I am 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 latter.

7. With this view of the matter, I 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. I 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. I 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 23rd day of April, 2024.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 23/04/2024

TNMM

Copy forwarded to:

1. Naresh Kencha, 17-6-28, Kareemabad, Warangal.
2. Income Tax Officer, Ward-1, Warangal.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD