

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

**BEFORE**  
**SHRI MANJUNATHA. G. Hon'ble ACCOUNTANT MEMBER**  
**AND**  
**SHRI NARASIMHA CHARY, Hon'ble JUDICIAL MEMBER**

ITA No.197/Hyd/2024		
Assessment Year: 2017-18		
Park Health Systems Private Limited, Hyderabad.  PAN : AAEC4353L  (Appellant / Assessee)	Vs.	The Assistant Commissioner of Income Tax, Circle – 16(2), Hyderabad.  (Respondent)
Assessee by:	Shri V. Siva Kumar, Advocate.	
Revenue by:	Ms. Sheetal Sarin, Sr.AR.	
Date of hearing:	24.04.2024	
Date of pronouncement:	24.04.2024	

**ORDER**

**PER MANJUNATHA G. A.M:**

This appeal filed by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi passed on 25.01.2024 for the assessment year 2017-18.

2. Facts of the case, in brief, are that the appellant company is engaged in Community, personal and social service business and operates hospitals in the name of 'The Deccan Hospital', filed its return of income for A.Y. 2017-18 on 30.10.2017 declaring current year loss of Rs.27,97,65,139/-. The assessment has been completed u/s 143(3) of the Income Tax Act, 1961 on 21.12.2019 determining total loss of Rs.24,59,83,410/- by making various additions, including the addition towards excess consideration received for allotment of equity shares under section 56(2)(viib) of the Income Tax Act, 1961 (hereinafter referred as "the Act") and disallowance of prior period expenses.

3. The assessee carried the matter in appeal before the first appellate authority. Before the Id.CIT(A), the assessee neither appeared nor filed any details. Therefore, the Id.CIT(A) partly allowed the appeal filed by the appellant and sustained additions made towards excess consideration received for allotment of equity shares under section 56(2)(viib) of the Act and disallowance of prior period expenses. Aggrieved with the order of Id.CIT(A), the assessee is in appeal before the Tribunal.

4. The learned counsel for the assessee, Shri V. Siva Kumar, Advocate, submitted that the Id.CIT(A) erred in sustaining the additions made by the Assessing Officer without providing

reasonable opportunity of hearing to the assessee which is contrary to the principles of natural justice. The learned counsel for the assessee referring to the affidavit filed by the assessee submitted that the first appellate authority has given only two notices of hearing. The first notice of hearing was issued on 28.01.2021 for which the appellant has filed a response on 12.02.2021. The second notice was issued after a gap of 3 years on 16.12.2023 and the same was not noticed by the appellant because it went into the spam folder. Since the appellant could not respond to the second notice, the ld.CIT(A) without providing further opportunity dismissed the appeal filed by the assessee. Therefore, he submitted that the matter may kindly be set aside to the file of ld.CIT(A) to give reasonable opportunity of hearing to the assessee.

5. The ld. DR Ms. Sheetal Sarin, on the other hand, supporting the order of ld.CIT(A) submitted that the assessee could not explain as to why it had not appeared before the ld.CIT(A) when the appeal was called for hearing. Therefore, the ld. DR submitted that there is no need to give another opportunity of hearing to the assessee before the first appellate authority.

6. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. Admittedly, the Id.CIT(A)'s order is silent on opportunities given to the assessee. Although, the Id.CIT(A) in Para 9.2 of the order stated that sufficient opportunity was given to the appellant to explain its case, but the appellant has not furnished any documentary evidence, it seems that Id.CIT(A) did not provide a reasonable opportunity of hearing to the assessee to explain its case. We further noted that as claimed by the assessee in its affidavit, the Id.CIT(A) seems to have given only two dates of hearing. The first notice of hearing was issued on 28.01.2021 for which, the appellant has responded. The second notice of hearing was issued on 16.12.2023 i.e., almost after a gap of 3 years which was not noticed by the assessee. The appellant has explained the reasons for not appearing on 16.12.2023. As per the affidavit filed by the appellant, the notice issued by the office of Id.CIT(A) went into spam folder and because of this, he could not file any response to the notice issued by the Id.CIT(A). In our considered opinion, the reason given by the appellant for not appearing before the first appellate authority when the appeal was taken up for hearing is bonafide and acceptable. Therefore, we are of the considered view that the appellant deserves one more opportunity of hearing before the first appellate authority to explain its case. Thus, we set aside the order of Id.CIT(A) appeal and restore the issue to the file of Id.CIT(A) for fresh adjudication. The Id.CIT(A) is directed to provide reasonable opportunity of hearing of the

assessee to explain its case. Needless to say, the assessee shall appear before the Id.CIT(A) as and when the appeal is taken up for hearing without seeking any adjournment.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 24<sup>th</sup> April, 2024.

<b>Sd/-</b> <b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(MANJUNATHA. G)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 24<sup>th</sup> April, 2024.

***TYNM/sps***

Copy to:

S.No	Addresses
1	Park Health Systems Private Limited, 6-3-903/A&B, Somajiguda, Hyderabad – 500 082, Telangana.
2	The Assistant Commissioner of Income Tax, Circle – 16(2), Hyderabad.
3	Prl.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*