

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. 369/Hyd/2024  
(निर्धारण वर्ष / Assessment Year: 2011-12)

Kishore Singh Rajpurohit, Hyderabad [PAN No. AEFPR8737L]	Vs. Income Tax Officer, Ward-7(3), Hyderabad
अपीलार्थी / Appellant	प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Smt. S. Sandhya, AR  
(Appeared through virtual mode)

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

सुनवाई की तारीख/Date of hearing: 03/06/2024  
घोषणा की तारीख/Pronouncement on: 06/06/2024

आदेश / ORDER

Aggrieved by the order dated 27/09/2022 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Kishore Singh Rajpurohit ("the assessee") for the assessment year 2011-12, assessee preferred this appeal with a delay of 502 days.

2. At the outset, learned AR submitted that during the proceedings before the learned CIT(A), the Chartered Accountant, who has been looking after the case of the assessee died and that is the reason why the assessee 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 502 days. In this connection, the assessee also filed condonation petition for delay along with a copy of the death certificate of the Chartered Accountant. Learned AR further submitted that the assessee has got good case to be presented, but it is only because of the circumstances beyond his control i.e., due to death of his counsel, the appeal was disposed of ex parte and by such ex parte proceedings, assessee does not stand to gain. Thus, learned AR submitted that given an opportunity, now assessee is ready to present all the evidence before the learned CIT(A) and pursue the appeal diligently and on that ground, learned AR prayed for an opportunity in the interest of justice.

3. She further submitted that under section 250(6) of the Act, the learned CIT(A) shall state the points for determination, the decision thereon, the reason for the decision and it is not open for the learned CIT(A) to dismiss the appeal in limine, stating that for non-prosecution, the appeal deserves to be dismissed.

4. Per contra, learned DR vehemently opposed the request made on behalf of the assessee on the ground that more than sufficient opportunity was granted by the Revenue authorities, but without availing the same, it is not open for the assessee now to seek one more opportunity. According to learned DR, if such a request is granted, it would lead to never ending process.

5. I have gone through the record in the light of the submissions made on either side. As per the record it is clear that sufficient opportunity was granted to the assessee by the learned CIT(A), to make submissions and file documents in support of his case. However, at the same, due to the death of the Chartered Accountant, who has been looking after the litigation affairs on behalf of the assessee, there is nothing to disbelieve

the explanation of the assessee that the assessee could not know the stage of the proceedings.

6. Having observed that since the assessee failed to avail the same, the learned CIT(A) while placing reliance on various decisions of the Hon'ble High Court as well as the Co-ordinate Benches of the Tribunal, dismissed the appeal in limine and confirmed the addition made by the learned Assessing Officer.

7. 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.

8. 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. In these circumstances, since learned Assessing Officer also finalized the assessment under section 144 r.w.s. 147 of the Act, affording an opportunity to the assessee to prosecute the case before the learned Assessing Officer by submitting the documents/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.

9. With this view of the matter, duly condoning the delay, I set aside the impugned order and restore the issue to the file of the learned Assessing Officer to decide the issue afresh. I direct the assessee to cooperate 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 of being heard to the assessee. Grounds are accordingly treated as allowed for statistical purposes.

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

Order pronounced in the open court on this the 6<sup>th</sup> day of June, 2024.

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

Hyderabad,  
Dated: 06/06/2024

TNMM

Copy forwarded to:

1. Kishore Singh Rajpurohit, 5-2-912, Risala Abdulla, Hyderabad.
2. Income Tax Officer, Ward-7(3), Hyderabad.
3. The Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD