

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.746/Kol/2024
Assessment Year: 2011-12

Cube Infrastructure Pvt. Ltd.Appellant

425, Dum Dum Park,
Kolkata, W.B. – 700055.
[PAN: AADCC3318D]

vs.

ITO, Ward-9(3), Kolkata.... Respondent

Appearances by:

None appeared on behalf of the appellant.

Shri Rajat Datta, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : December 03, 2024

Date of pronouncing the order : December 04, 2024

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 09.02.2024 of the Commissioner of Income Tax, Appeal ADDL/JCIT(A)-9, Mumbai [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. At the time of hearing, no one appeared on behalf of the assessee, although notices were served on time to time from the registry to the assessee through post on 22.08.24, 3.12.2024. As all options have gone in vain since no one appeared on behalf of the assessee on the consecutive dates, under such situation, we cannot keep this appeal pending for inordinate delay for adjudication. We, therefore, feel it necessary to decide this appeal on the basis of material available on record and with the assistance of the ld. DR.

3. At the outset, the ld. DR fairly submitted that the instant appeal of the assessee was dismissed by the ld. CIT(A) solely on the ground of delay of 229 days in filing the appeal before him and the appeal of the assessee was decided ex parte without looking into merits of the case. Therefore, he stated that the Tribunal may remand back the matter to the file of the ld. CIT(A) with a direction to re-examine the issue afresh after affording reasonable opportunity of being heard to the assessee.

4. We, after hearing the submission of the ld. DR and perusing the materials available on record, find that the appeal of the assessee was simply dismissed by the ld. CIT(A) on the ground of condonation of delay of 229 days in filing the appeal before the ld. CIT(A) without looking into merits of the case and also the case of the assessee remained unrepresented before the ld. CIT(A). The principles of natural justice cannot be sacrificed in tax proceedings denying of taxpayer's right to be heard on merits solely due to procedural lapses undetermined principles Hon'ble Supreme Court in number of cases, time and again, held that when merits and technicalities pitted against each other, then merit alone deserves to be prevailed, because, if you throw out a meritorious case out of judicial scrutiny on the grounds of technicalities, then you may deprive the right of the petitioner in pursuing their case. Moreover, natural justice demands that cases be decided on merits as prescribed u/s 249(3) of the Act which allows the condonation of delay if sufficient cause is explained. Deciding the appeal without going into the merit of the case is led to undue hardship and is a violation of principles of natural justice. We, therefore, deem it necessary to remand back the issue to the file of the ld. CIT(A) with a direction to condone the delay of 249 days in filing the appeal before the ld. CIT(A) and decide the issue on the merits of the case. The assessee is also directed to comply with the notices that may be issued by the ld. CIT(A) served without fail.

5. In terms of the above, the appeal of the assessee is allowed for statistical purposes.

Kolkata, the 4th December, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 04.12.2024.

RS

Copy of the order forwarded to:

1. Cube Infrastructure Pvt. Ltd
2. ITO, Ward-9(3), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches