

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISA KHAPATNAM BENCH**

**Before Shri Manjunatha G., Accountant Member  
and  
Shri K. Narasimha Chary, Judicial Member**

आ.अपी.सं / **ITA No.515/Viz/2024**  
(निर्धारण वर्ष / Assessment Year: 2022-23)

Ramakrishna Housingg Vijayawada [PAN : AASFR5923P] (Appellant)	Vs.	Income Tax Officer Ward-2(1) Vijayawada (Respondent)
निर्धारिती द्वारा / Assessee by:	Shri B.Srinivasa Rao & Ors.	
राजस्व द्वारा / Revenue by::	Dr.Satyasai Rath, CIT(DR)	
सुनवाई की तारीख / Date of hearing:	11/03/2025	
घोषणा की तारीख / Date of Pronouncement:	13/03/2025	

आदेश / ORDER

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

This appeal filed by the assessee is directed against the order dated 22.11.2024 of the learned Commissioner of Income Tax (Appeals) [Learned CIT(A)], National Faceless Appeal Centre (NFAC), Delhi, relating to A.Y.2022-23.

2. The brief facts of the case are that the assessee is a partnership firm, engaged in the business of real estate development, filed its return of income for the A.Y.2022-23 on 31.12.2022, declaring loss of Rs.1,28,297/-. The case was selected for scrutiny and during the course of assessment proceedings, the

Assessing Officer (“the AO”) issued notice u/s 142(1) and 143(2) of the Income Tax Act, 1961 (in short “Act”) on various dates and called upon the assessee to file relevant evidences, in support of return of income filed for the year under consideration. The assessee neither appeared, nor filed any evidences, therefore, the AO issued show cause notice and called upon the assessee to explain, as to why the assessment proceedings shall not be completed in terms of section 144 of the Act. Once again, the assessee did not furnish any details as called for by the AO. Therefore, the AO passed ex-parte best judgment assessment order u/s 144 of the Act on 05.03.2024 and determined total income at Rs.61,64,11,609/- by making various additions to the returned loss.

3. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A) and such appeal has been filed with a delay of 132 days. The Ld.CIT(A) posted the case for hearing on various dates, however, the assessee neither appeared nor furnished any explanation. Therefore, the Ld.CIT(A) disposed of the appeal filed by the assessee ex-parte and dismissed the appeal filed by the assessee ‘in limine’ for want of prosecution.

4. Aggrieved by the order of the Ld.CIT(A), the assessee is now in appeal before the Tribunal. Shri B.Srinivasulu, learned counsel for the assessee, referring to para 3 of the order of the Ld.CIT(A) submitted that, although the assessee has furnished relevant details including assessment order along with Form No.35, but the Ld.CIT(A) dismissed the appeal filed by the assessee, on the

ground that a decision on merits cannot be taken in the absence of assessment order and any other details. Therefore, he submitted that to give another opportunity of hearing to the assessee, the matter may be set aside to the file of the AO /CIT(A) and the assessee is willing to provide necessary details, in support of return of income filed for the assessment year under consideration.

5. The Ld.DR on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee is non-cooperative at all stages of proceedings, which is evident from the ex-parte assessment order passed by the Ld.AO and the Ld.CIT(A). The assessee could not adduce any reason as to why there is no representation during the assessment proceedings and appellate proceedings. In the absence of any reason, as to why the assessee could not file relevant evidences, there is no reason to provide another opportunity to the assessee and therefore, the order of the authorities should be upheld.

6. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. Upon consideration of para 3 of the order of the Ld.CIT(A), we find that the Ld.CIT(A) dismissed the appeal filed by the assessee for want of prosecution, however, did not consider the issue on merits, on the ground that the assessee could not even furnish a copy of the assessment order. But the fact remains that the assessee has filed relevant details, including copy of the assessment order, facts of the case and issues disputed in the appeal along with Form No.35

filed before the Ld.CIT(A), which is evident from the acknowledgement receipt of filing of Form No.35 dated 14.08.2024, where the assessee has attached copy of assessment order, financial statements and statement of facts, in support of its appeal. Although the assessee has furnished relevant details, but the Ld.CIT(A) dismissed the appeal filed by the assessee 'in limine' for want of prosecution, contrary to settled principles of law that even in case of non-prosecution by the assessee, the appeal should be decided on merits on the basis of material available on record. Since the Ld.CIT(A) dismissed the appeal without discussing the issue on merits, in our considered view, the issue needs to go back to the lower authorities. Since the assessment itself is ex-parte and the assessee has not furnished any details, in our considered view, instead of setting aside the issue to the file of the Ld.CIT(A), we deem it appropriate to remit the matter back to the file of the AO. Thus, we set aside the order passed by the Ld.CIT(A) and restore the issue back to the Assessing Officer with a direction to reconsider the issue 'denovo' after providing an opportunity of hearing to the assessee. Needless to say, the assessee shall furnish relevant evidences, in support of its claim and appear before the AO, as and when the AO provides opportunity of hearing to the assessee to explain its case. The assessee is directed to pay a nominal cost of Rs.5,000/- for showing negligence on the part of the assessee to appear before the authorities, when the case was called for discussion and the assessee is directed to pay the cost as directed, to Prime Minister's Relief Fund and produce necessary evidence to the Registry.

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

Order pronounced in the Open Court on 13<sup>th</sup> March, 2025.

<p><b>Sd/-</b>  <b>(K. NARASIMHA CHARY)</b>  <b>JUDICIAL MEMBER</b></p>	<p><b>Sd/-</b>  <b>(MANJUNATHA G.)</b>  <b>ACCOUNTANT MEMBER</b></p>
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Hyderabad,  
dated 13<sup>th</sup> March, 2025  
**L.Rama, SPS**

Copy to:

S.No	Addresses
1	M/s Ramakrishna Housingg, 54-15-18, Ring Road, Srinagar Colony, Vijayawada
2	The Income Tax Officer, Ward-2(1), CR Building, Vijayawada
3	The Pr.CIT, Visakhapatnam
4	The DR, ITAT, Visakhapatnam
5	Guard File

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