

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.312/Kol/2025
Assessment Year: 2010-11

M/s Prajapati Commodities Pvt. Ltd.....Appellant
51, Vivekanda Road, 2nd Floor,
Kolkata-1.
[PAN: AAEC2927L]

vs.

ITO, Ward-5(2), Kolkata.....Respondent

Appearances by:

None appeared on behalf of the assessee.

Shri Kallol Mistry, JCIT, Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : May 13, 2025

Date of pronouncing the order : May 14, 2025

ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the assessee against an order dated 09.01.2025 of the National Faceless Appeal Centre [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 from the registry to the assessee. We cannot keep this appeal pending for inordinate delay for adjudication; therefore, we feel it necessary to decide this appeal on the basis of material available on record and with the assistance of the ld. DR.

3. Brief facts of the case are that the assessee is a company and filed its return of income for the assessment year under consideration by declaring total income of Rs.31,007/-. The case of the assessee was later

on reopened u/s 147 of the Act with the reasons to belief that the assessee had allegedly received bogus accommodation entry of Rs.25,00,000/-. Subsequently, notices u/s 143(2) and 142(1) of the Act were issued to the assessee but the assessee failed to give satisfactory reply. The Assessing Officer thereafter completed the assessment by passing an order u/s 144/147 of the Act assessing total income of the assessee at Rs.25,31,010/-.

4. Aggrieved by the above order, the assessee preferred an appeal before the ld. CIT(A), however, the appeal of the assessee was dismissed by the ld. CIT(A) solely on the ground of delay of 87 days in filing the appeal before him as the assessee failed to file a proper application or petition for condonation of delay along with Form 35. Subsequently, the appeal of the assessee was decided ex parte without looking into merits of the case.

5. The ld. DR has agreed to the fact that in the interests of justice, the Tribunal may remand back the matter to the file of the ld. CIT(A) with a direction to re-examine the issue afresh provided that the Tribunal directs the assessee to file a proper condonation petition explaining the reasons for delay before the ld. CIT(A).

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 87 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 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. We note that 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 whole issue to the file of the Id. CIT(A) with a direction to re-examine the issue afresh. We also direct the assessee to file a proper condonation petition before the Id. CIT(A) duly explaining the reasons for such delay and the Id. CIT(A) shall consider the condonation application and if satisfies with the reasons cited therein shall condone the delay accordingly and dispose of the appeal on merits in accordance with law after giving proper and sufficient opportunities of hearing to the assessee. The assessee is also directed to comply with the notices that may be issued by the Id. CIT(A) without any fail.

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

Kolkata, the 14th May, 2025.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 14.05.2025.

RS

Copy of the order forwarded to:

1. Appellant -
2. Respondent -
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches

