

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA  
(Virtual Court)**

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)**

**I.T.A. No. 2406/Kol/2019  
Assessment Year: 2014-15**

**DCIT, Circle-6(1), Kolkata.....Appellant**

**Vs.**

**Shri Saroj Kumar Poddar.....Respondent  
[PAN: AFTPP 2386 N]**

**Appearances by:**

*Sh. Devi Sharan Singh, CIT(D/R), appeared on behalf of the Revenue.*

*Miss Nisha Rachh, FCA, appeared on behalf of the Assessee.*

Date of concluding the hearing : May 10<sup>th</sup>, 2021

Date of pronouncing the order : May 11<sup>th</sup>, 2021

**INTERIM ORDER**

**Per J. Sudhakar Reddy, AM:**

The ld. CIT(D/R) filed an application for adjournment of this case for a period of **six months** vide letter dated 08.05.2021. The ld. Counsel for the assessee Miss Nisha Rachh, FCA strongly objected to the adjournment of the case. She submitted that the appeal itself is not maintainable and hence should be dismissed as such.

2. After hearing both the parties, we deem it fit to note the sequence of events for ready reference. The Revenue has filed this appeal on 6th November, 2019. The case was posted for hearing on 21/01/2021. On 19/01/2021, the ld. CIT(D/R), moved an application for adjournment on the ground that, he is making a recommendation for appointing a special counsel to defend the case of the Revenue, as was done earlier in the first round of appellate proceedings before the ITAT. He sought an adjournment to an appropriate date. The case was adjourned to 9th February, 2021. On 25/01/2021, the ld. Counsel for the assessee moved an application for final hearing and disposal of the appeal on 09/02/2021 on priority basis on the ground that the respondent is an aged man of 77 years having health issues and is under tremendous strain due to the

prevailing pandemic situation. It was pointed out that this is the second round of proceedings before the ITAT and that all papers are on record and that the assessee wants all his disputes settled at the earliest.

2.1. On 09/02/2021, the ld. CIT(D/R), moved an application for adjournment on the ground that a special counsel, Shri Girish Dave, has to be appointed as a Special Counsel as he had represented the Revenue in this case during the first round before the ITAT. He sought an adjournment for a period of 1 month. Taking into consideration the objections of the assessee, the case was adjourned to 10/02/2021 with a direction to the Department to specify any particular date on which the hearing of the case can be taken up for final hearing in view of the objections raised by the assessee for grant of adjournment.

2.2. On 10th February, 2021, the ld. Counsel for the assessee addressed a letter to the Hon. Vice President, ITAT, Kolkata, strongly objecting to the adjournments being sought by the Revenue on the ground that a special counsel, Mr. Girish Dave is being appointed. He once again requested that the assessee wanted early settlement of all his disputes, as he is an aged man of 77 years and during the pandemic period, he feels stress and strain due to his health condition. On 10/02/2021, the departmental representative could not assist the Bench either on the status and the stage of the appointment of the special counsel or on the date on which the Revenue is comfortable to argue the matter. The case was adjourned to 11.02.2021. As the department failed to reply, the case was adjourned to 03/03/2021 on the request of the Revenue. The request of the ld. Counsel for the assessee to commence the hearing of the case on 11.02.2021 was rejected by the Bench.

2.3. On 03/03/2021, the ld. CIT(D/R), sought adjournment for a period of **three weeks** on the ground that the Revenue is in the process of appointing a special counsel. The ld. Counsel for the assessee again strongly objected to the grant of adjournment. Despite the objections, the Bench granted adjournment of **three weeks** to the Revenue as sought for. The case was fixed for hearing on 23/03/2021. Aggrieved, the assessee filed a grievance petition before the "Centralized Public Grievance Redress And Monitoring System" (CPGRAMS).

2.4. On 23/03/2021, surprisingly, the Revenue took a stand that the case should be adjourned for a period of **three (3) months**, on the same ground that the appointment of a special counsel, Mr. Girish Dave, is in progress. The Id. Counsel for the assessee objected and submitted that the request should not be granted. The age and health of the assessee and pandemic were once again cited as reasons for seeking early disposal. The matter was adjourned to 13.04.2021 on assurance from the Id. CIT(D/R) that the objections of the assessee are taken note of by the Department and the matter of appointment of Special Counsel would be expedited.

2.5. On 09/04/2021, the assessee filed objections on the maintainability of the Revenue's appeal. He filed detailed submissions pointing out the defects in Form No. 36 filed by the Department as well as the maintainability of the grounds of appeal. On 13/04/2021, the virtual hearing of the case was adjourned due to poor connectivity to 15.04.2021. On 15.04.2021 the Revenue sought yet another adjournment on the same ground that Mr. Girish Dave is being appointed as a Special Counsel. The case was adjourned to 03.05.2021 and the Id. CIT(D/R) was asked to submit the reply of the department on the issue maintainability of this appeal on the next date of hearing i.e. on 05.05.2021.

2.6. The Id. Counsel for the assessee again filed a letter dated 29.04.2021 stating that no further adjournment should be given to the Revenue as already six (6) adjournments have been granted and citing the **order XVII of the Civil Procedure Code** and his earlier objections.

2.7. On 03/05/2021, the Id. CIT(D/R), sought an adjournment on the ground that Shri Girish Dave communicated his consent to represent the Revenue's case on 31/03/2021 and the matter was taken up with the JCIT (OSD) CBDT in the requisite Performa. Adjournment of further period of **three (3) months** was sought. The Id. Counsel for the assessee strongly objected to the request for adjournment and submitted that the appeal itself is not maintainable due to the defects in Form No. 36 and the non-maintainability of the grounds of appeal. The Bench directed the assessee to make his submissions on the maintainability of the appeal. The Id. Counsel for the assessee made elaborate submissions on the preliminary issue of maintainability of the appeal. He relied on the written submissions filed by him on 09.04.2021. Thereafter, the

ld. CIT(D/R), was directed to file the response of the department on the preliminary issue of maintainability of the appeal within a period of 1(one) week. The case was posted for hearing today i.e. 10/05/2021.

2.8. The ld. CIT(D/R), ITAT-1, Kolkata addressed the following letter to the Pr. CIT-2, Kolkata being F.No. CIT (AU)-2/Kol./Admin-I/2020-21/II dated 03.05.2021. This letter is extracted for ready reference.

*"In this regard, the hearing in the above matter was fixed in ITAT 'A' Bench, Kolkata was fixed for 03/05/2021. The Department has sought to engage a Special Counsel in this case which is under process and hence adjournment in the matter was sought on this ground. [Copy of adjournment letter dated 03/05/2021 filed in the ITAT 'A' Bench, Kolkata is enclosed].*

*However, during hearing, the AR of the assessee has objected to the figures as quoted at Col. No. 7(a), (b) & (c) of Form No. 36. Further, the AR of the assessee has pointed out during hearing of the appeal in earlier round before the Hon'ble Tribunal, the Departmental Representative had not pressed or denied to pressed to press his arguments in support of conclusions of AO, except 28(iia) and 45 r.w.s. 55(2)(a). Thus, the Departmental Representative conceded that receipt in question cannot be taxed u/s 56(2) or 56(2)(vii). [Please also refer to Page 54 of CIT(A)-2, Kolkata's Appellate Order No. 10147/CIT(A)-2/18-19 dated 01/08/2019] and thus he has challenged the Grounds of Appeal itself.*

*The matter may kindly be got examined at your end and a reply in this regard is required to be furnished before the ITAT 'A' Bench, Kolkata on or before 10.05.2021 which has been fixed as the next date of hearing, as directed by the Bench. A copy of the same should also be sent to CIT(D/R) for arguing the case further."*

3. Today on 10.05.2021 the ld. CIT(D/R) requested for **six months** adjournment of this matter vide letter bearing no. F. No. CIT (AU)-2/Kol./Admin-I/2020-21 letter dated 08.05.2021, filed with the Bench on 10.05.2021. Relevant portions of this letter are extracted for ready reference.

*"5. However the Bench directed to revise grounds of appeal on that day and when it was requested that matter may be adjournment for a period of minimum **three days**, it was said that try to do it by 10/05/2021 and in case it is not done by 10/05/2021, then the hearing will be further adjourned.*

*6. In this case, the reply from the office of Principal Commissioner of Income Tax-2, Kolkata has been received and is enclosed with this letter. The last para of the reply is quoted below:*

*"I am further directed to intimate that due to the ongoing Covid-19 pandemic, there is hindrance in normal official work. You may be aware that even the Legislative Secretary G. Narayan Raju has died of COVID-19 and the situation in this office is also worse as many officers / officials have been affected. Therefore, I am directed to intimate that the hearing date of the said case may kindly be extended / kept in abeyance till normalcy returns and the worsening situation that we are facing due to Covid-19 pandemic comes under control. Considering the ongoing pandemic situation, the Hon'ble ITAT may be requested to kindly grant a stay of minimum period of six (6) month, so that in the meanwhile, the special counsel*

*can be engaged in place of Mr. Girish Dave. I am further directed to request your kind self that the case may not be disposed without giving a complete hearing."*

*7. It is also to bring to your notice that the performance of Sh. Girish Dave, the then Standing Counsel of the Department before the Income Tax Appellate Tribunal was found to be not at all satisfactory as pointed out by the Assessing Officer vide his letter dated 04/03/2021 to the Principal Chief Commissioner of Income Tax, West Bengal & Sikkim.*

*8. In this case it is further noticed that the case has been inadvertently shown as PART HEARD whereas there was no such discussion / direction at all on the date of last hearing.*

*9. In view of the above, it is humbly requested that the next hearing in this case may kindly be scheduled after a period of minimum **six (6) months** and further that the case may not be disposed without giving a complete hearing and further the case may be delisted from the category of PART HEARD cases.*

*10. Inconvenience caused, if any, is highly regretted."*

3.1. The Id. Counsel for the assessee Miss Nisha Rachh, submitted that, no further time should be granted to the department. She submitted that the maintainability of the appeal may be decided by the Bench based on the papers on record as the Department is unwilling to even make any submissions in this matter despite specific opportunity and directions of the Bench on this issue. Sh. Girish Dave is suddenly changed for reasons known to the AO for more than **30 months**. She strongly objected to the letter of the Revenue seeking adjournment and submitted that this is the second round of appeal proceedings of this case before the Tribunal and that all the papers and arguments on the legal issues including the maintainability of the appeal, are on record and that the Bench can dispose off this appeal in accordance with law. She pointed out that CIT(D/Rs) are regularly appearing virtually before different Benches of the ITAT in other cases, and have been arguing the matters. She pleaded that the appeal of the Sr. Citizen should be considered specifically due to the pandemic situation. She submitted that under no circumstances **six months** time should be granted to the Revenue. She prayed that the case be disposed off on the preliminary issue of maintainability of the appeal, in accordance with law.

4. After considering all the papers on record and submissions of both sides, we find that both the parties are citing "the pandemic" as the reason for either, early disposal of the matter or for seeking indefinite postponement of the adjudication of the matter. In our view, the Revenue's present request is highly unreasonable and unwarranted. From seeking adjournment for a period of **thirty days** to further period of **three weeks** and thereafter coming with a request for a further period of '**three months**' adjournment,

today a request is made by the Department for an adjournment for a further period of **six (6) months**. On the earlier dates of hearing, the adjournments were sought on the ground that a special counsel Mr. Girish Dave is being appointed as he had represented the Revenue before the ITAT on the very same matter during the first round of appellate proceedings in the month of August, 2018. It was submitted by the ld. CIT(D/R) that Mr. Girish Dave has given consent on 31.03.2021 to represent this matter. Today, suddenly, the Revenue seeks time to engage another Special Counsel, in the place of Mr. Girish Dave, who has already given his consent, on the ground that the Assessing Officer did not find the performance of Mr. Dave, to be satisfactory on the earlier occasions i.e., in August, 2018. This sudden change of mind of the AO is not explained. The performance of Mr. Girish Dave was known to the Department in August, 2018 itself. We wonder as to why it took so long for the AO to come out with this opinion that the performance done **thirty months** back is not satisfactory. Why it was not satisfactory, is not stated. The order of the ITAT dated 16.11.2018 has not been challenged before the Hon'ble High Court and so it has attained finality. The entire narrative of the Department is being changed when the Bench has directed the Department to reply on the issue of maintainability of this appeal. The AO is the appellant and he is bound to reply to the Bench of the ITAT on the issue of defects in the appeal From no. 36 and to the issue of maintainability of the grounds of appeal. He is duty bound to file reply addressing the maintainability of the appeal and cannot dodge the issue at this stage and make excuses.

4.1. The Revenue is also raising strong objections, without any valid ground, for the hearing of the appeal by the Bench on the preliminary issues of maintainability of the appeal. These objections are hereby rejected. This Bench has been highly accommodative and has granted a number of adjournments to the Department till date despite strong and valid objections of the assessee who is a sr. Citizen with health issues and who is requesting resolution of all his disputes at an early date due to the pandemic. Government offices and Senior Officers above the rank of Deputy Secretary to the Govt. of India, are duty bound to attend office and discharge their duties during this pandemic. The cases before the ITAT are being represented by the Officers of the rank of "Additional Commissioner of Income Tax" as well as "Commissioner of Income Tax" on a regular basis all through this pandemic. Even complicated Transfer Pricing and international tax matters have been heard and disposed off during this pandemic

period. No officer tried to avoid arguing the cases and have been coming fully prepared. The officers are required to discharge the duties entrusted to them and are not expected to shift responsibilities, on one pretext or another. We Members of the ITAT are regularly attending offices and disposing off cases through virtual court with the help and assistance of the Id. Sr. D/Rs, CIT(D/R)s as well as the members of the Bar.

4.2. Pandemic, health, stress and advanced age can be a relevant factor for the assessee who is a senior citizen to seek early settlement of disputes. This request, in our view, is perfectly justified and every citizen has a right to seek such early disposal. Central Government officers, during the pandemic are expected to perform their duties in accordance to law. The Revenue is duty bound to make arrangements to represent its case before the Tribunal. The CIT(D/R)s have to reply to the preliminary objection raised by the assessee in respect of maintainability of the appeal and the AO is required to state his case and justify the department's grounds in accordance to law.

4.3. First of all, let us make it clear, we are aware of the Pandemic and still we are attending office/Tribunal every working day and in all cases where adjournment is sought by one party i.e., either the revenue or the assessee, then, we grant the same. However, if there is any objection raised by the other party then only such a situation like this arises. Here we have to strike a balance keeping in mind the apprehensions of the assessee, who is a senior citizen under the prevailing pandemic conditions and the Revenue's plea of adjournment for six months. In the aforesaid circumstances, adjournment sought by the Id. D/R, on the general plea of circumstances prevailing in the country i.e., Covid-19 Pandemic, need to be appreciated and considered. We note that already six (6) months have passed after filing of this appeal and at the time of the filing of this appeal, the grounds of appeal have to be filed by the Assessing Officer after obtaining the approval from the competent authority after due application of mind. Now that the maintainability of the contents of Form-36 and the grounds of appeal are being challenged by the assessee raising a preliminary objection. Adjournment sought for six months is unreasonable and in case the Id. D/R, wants reasonable time, then he has to come with a specific reason. However, that is not the case here. Here the adjournments are being sought time and again and when the preliminary objection is being raised in respect of the maintainability of the appeal (Form-36 and Grounds of appeal), the plea

for adjournment on the specious plea of the general condition prevailing in this country, cannot be a reasonable ground for grant of adjournment and that too for a period of six (6) months. Under the Taxpayers' Charter the Department is committed to provide timely decisions in every income-tax proceedings. The authorities are accountable for their actions.

5. Hence, we order as follows:-

a) The request for adjournment made by the Revenue is granted for the last time. However, the request of the Revenue for **six months** stay/adjournment is rejected.

b) The appeal is posted for final hearing on the preliminary objection raised in respect of maintainability of the appeal on 24/05/2021. No further adjournment shall be granted in this appeal to either parties.

c) The appeal is directed to be de-listed from the category 'part heard'.

d) The AO who is the appellant in this case is directed to file his written reply to the letter of the Id. CIT(D/R) addressed to the Pr. CIT-2, Kolkata being F. No. CIT (AU)-2/Kol./Admin-I/2020-21/II letter dated 03.05.2021 by 20.05.2021 with a copy to the assessee. It is the duty of the AO to demonstrate that this appeal is maintainable.

e) The Id. CIT(D/R) is directed to make his submission on behalf of the department on the maintainability of this appeal of the Revenue on 24.05.2021.

f) The Assistant Registrar, ITAT, Kolkata is directed to serve a copy of this order on both parties.

***Kolkata, the 11<sup>th</sup> of May, 2021.***

***Sd/-***

[Aby T. Varkey]  
Judicial Member

Dated: 11.05.2021

S.C. (P.S.)

***Sd/-***

[J. Sudhakar Reddy]  
Accountant Member



*Copy of the order forwarded to:*

1. ***DCIT, Circle-6(1), Kolkata.***
2. ***Shri Saroj Kumar Poddar, Hongkong House, 31, BBD Bagh (South), Dalhousie, Kolkata-700 001.***
3. CIT(A)-2, Kolkata (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches