(2006) 05 AHC CK 0037

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 296 of 2006

Surya Prakash Gupta		APPELLANT
	Vs	
Commissioner of Income Tax, Allahabad		RESPONDENT

Date of Decision: May 15, 2006

Acts Referred:

- Income Tax Act, 1961 - Section 264

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: J.B. Singh and Harikesh Bahadur Singh, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Arun Tandon, J.
The revision petition filed by the assessee u/s 264 of the Income Tax Act, 1961 has been dismissed under orders of the Commissioner, Income Tax, Allahabad dated 17.11.2005 after recording a finding that the assessee did not cooperate with the Assessing Officer In the assessment proceedings. Further final hearing was fixed on 25.10.2005, which was adjourned to 11.11.2005 despite notice, the assessee nor his counsel appeared. On behalf of the assessee, it has been stated that one Sri J.B. Singh, Advocate, was engaged as counsel for the assessee. After prolonged illness, Sri J.B. Singh expired on 5.4.2005. Thereafter, Sri Harikesh Bahadur Singh, Advocate, son of Sri J.B. Singh, was appointed as counsel for the assessee. For certain reasons Sri Harikesh Bahadur Singh could not attend the proceedings on 25.10.2005 and on 11.11.2005, he was actually ill. Medical Certificate in that regard has already been enclosed.

2. From the facts which have been noticed hereinabove, this Court is satisfied that the absence of the Counsel for the assessee in facts of the present case cannot be said to be

deliberate and, therefore, the order rejecting the revision petition u/s 264 of the Income Tax Act, 1961 because of the absence of the assessee/his counsel in the facts of the present case is not in the interest of substantial justice. The order is accordingly set aside.

3. The Commissioner, Income Tax, Allahabad, is directed to re-consider and decide the application filed by the assessee u/s 264 of the Income Tax Act after affording opportunity of hearing to the assessee in accordance with law preferably within a period of six weeks'' from the date a certified copy of this order is filed before him. It is understood that unnecessary adjournments shall not be granted to the assessee. The assessee undertakes to file certified copy of this order before the Commissioner, Income Tax, Allahabad on or before 31st May, 2006. Writ Petition is allowed subject to the observation made above.