

आयकर अपीलीय अधिकरण, ' बी ' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ I.T.A. No. 1/Mds/2017
निर्धारण वर्ष/Assessment Year : 2009-10

The District Registrar,
GF Muthupattinam,
Karaikudi,
Sivaganga -1.

Director of Income Tax, (I & CI),
Vs. Chennai – 34.

[PAN: MRIDO 0582B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri T. Vasudevan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri Narendra Kumar Naik, JCIT

सुनवाई की तारीख/Date of Hearing

: 20.06.2017

घोषणा की तारीख/Date of Pronouncement

: 20.06.2017

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Madurai, in ITA No. 0111/2011-12 dated 24.10.2016.

2. The Director of Income Tax, (I & CI), Chennai found that the assessee, the District Registrar, has failed to furnish AIR for financial year 2009-10 within the due date, initiated penalty proceedings u/s. 271FA and levied penalty of Rs. 46,400/- for the period of 01st September, 2010 to 8th December, 2011. Aggrieved, the assessee filed an appeal before the CIT(A)-2, Madurai. The CIT(A) dismissed the appeal, in limine, for the reason that an appeal against the order passed u/s. 271FA is not provided under 246A of the Act.

3. Aggrieved, the assessee filed this appeal on the grounds that the CIT(A) dismissed the appeal as not maintainable which is contrary to law, erroneous and unsustainable on the facts of the case. The CIT(A) failed to appreciate that clause 'q' of section 246A provides for an appeal remedy from the levy of penalty under Chapter XXI and section 271FA is placed within this Chapter and hence, the dismissal of appeal is untenable in law. The CIT(A) failed to appreciate that the assessee is under statutory obligation to file AIR information, **only if** it exceeds monetary limit prescribed u/s. 285BA and the assessee **not** having exceeded the limit cannot be considered to be in default and hence the levy of penalty is unjustified and untenable in law etc. The AR also relied on the decision of the Rajasthan High Court in the case of Director of Income Tax (CIB) Vs Ravi Vijay & Another & Others, S.B. Civil Writ Petition No. 11458/2011, 11914/2011, dated 09.07.2012 which is reported in 2012 (9) TMI (TaxManagementIndia.com) 652 and took us to the ratio laid therein that

an order u/s. 271FA (Chapter XXI) of the Act, 1961, is plainly appealable u/s. 246A(1)(q) of the 1961 Act and no amount of interpretative exercise can displace law as enacted. Per contra, the DR relied on the order of the CIT(A).

5. We have considered the rival submissions and gone through the copy of Rajasthan High Court's decision filed by the AR. There is merit in the AR's submission and hence, the issue is remitted back to the CIT(A) for deciding the appeal on merits, after giving adequate opportunity to the assessee

6. In the result, the assessee's appeal is allowed for statistical purpose.

Order pronounced on Monday, the 20th day of June, 2017 at Chennai.

Sd/- (जॉर्ज माथन) (GEORGE MATHAN) न्यायिक सदस्य/Judicial Member	Sd/- (एस जयरामन) (S. JAYARAMAN) लेखा सदस्य/Accountant Member
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चेन्नई/Chennai,

दिनांक/Dated: 20th June, 2017

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |