

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' (SMC) BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.96/Chny/2020
निर्धारण वर्ष /Assessment Year: 2011-12

M/s. Cuddalore IMA Welfare Trust
No.6/17-A, Krishna Hospital Road,
Cuddalore – 607 001

The Income Tax Officer
(Exemptions), Ward-2,
Vs. 121, M.G. Road, Wanaparthy
Block, Chennai – 600 034

[PAN: AAATC 7520M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr. J. Prabhakar, C.A
: Ms. R. Anitha, JCIT

सुनवाई की तारीख/Date of Hearing

: 12.03.2020

घोषणा की तारीख /Date of Pronouncement

: 12.03.2020

आदेश / ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER:

This is an appeal filed by the assessee against the order of the learned Commissioner of Income Tax (Appeals)-17, Chennai in I.T.A No.308/CIT(A)-17/2018-19 dated 21.03.2019 for the Assessment Year 2011-12.

2. Mr. J. Prabhakar, Chartered Accountant represented on behalf of the Assessee and Ms. R. Anitha, JCIT represented on behalf of the Revenue.

3. It was submitted by the learned Authorized Representative that the appeal of the assessee is delayed by 231 days. It was a submission that the delay was on account of the auditor of the assessee who were busy with time barring and financial year ending accounts and they had lost track of the order and the appeal to be filed thereon. It was a submission that only when the assessment for the assessment year 2012-2013 came to be framed in December 2019, the non-filing of the appeal for the year 2011-2012 had been recognized and immediately thereafter the appeals were filed. It was a submission that the delay was unintentional. It was a prayer that the delay may be condoned.

4. In reply, the learned Departmental Representative vehemently opposed the condonation of delay.

5. I have considered the rival submissions and perused the materials available on record.

6. It is noticed that the assessee has given an explanation in respect of the delay. The delay is on the part of the auditor of the assessee, the assessee should not be put to hardship. Further, the reasons given by the assessee are very much plausible and they are not found to be false.

This being so, in the interest of substantial justice, the delay in filing the appeal is condoned and the same is disposed of on merits.

7. It is submitted by the learned Authorized Representative that the assessee is a Charitable Trust. It was a submission that the assessee had filed for registration u/s.12A on 21.12.2005. It was a submission that vide letter dated 30.01.2006, the learned Commissioner of Income Tax, Pondicherry had directed that the Trust may carry on its objectives and activities till 31.03.2006 and furnish a note on that thereafter for further processing of the matter. It was a submission that subsequently no further action was taken by the learned Commissioner of Income Tax. It was a submission that notice u/s.148 came to be issued on the assessee by the Income Tax Officer, Ward -1, Cuddalore on 21.03.2018. The assessee had filed its return of income on 21.03.2018 disclosing 'Nil' income. It was a submission that as per the assessment order

the assessee's case was transferred from the Income Tax Officer, Ward -1, Cuddalore to Income Tax Officer (Exemptions), Ward-2, Chennai. It was a submission that the provisions of Section 129 of the Income Tax Act, 1961 for the purpose of transfer of the file of the assessee from the Income Tax Officer, Ward-1, Cuddalore to Income Tax Officer (Exemptions), Ward-2, Chennai had not been complied with. It was also a submission that the reasons recorded for the purpose of issuance of notice u/s.148 had not been intimated to the assessee. Consequently, the assessee was unable to file its objections. It was a submission that it was only after that, the jurisdiction could have been changed and no opportunity had been given to the assessee as required u/s.129 also. It was a submission that he had no objection if the issues were restored to the file of the Assessing Officer for re-adjudication after providing the assessee the reasons recorded for the purpose of reopening and following the principles laid down by the Hon'ble Supreme Court in the case of GKN Drivenshafts (India) Limited vs. Income Tax Officer reported in [2003] 259 ITR 19 (SC). It was also a submission that the assessee must be granted opportunities as provided u/s.129 of the Income Tax Act, 1961.

8. In reply, the learned Departmental Representative vehemently supported the order of the learned Assessing Officer and the learned Commissioner of Income Tax.

9. I have considered the rival submissions and perused the materials available on record.

10. A perusal of the facts of the present case clearly shows that the reasons recorded have not been intimated to the assessee. In these circumstances, I am of the view that the assessee must be granted the copy of the reasons recorded for the purpose of reopening, so that the assessee can file its objections to the same and the same must be disposed of in line with the decision of the Hon'ble Supreme Court in the case of GKN Drivenshafts (India) Limited vs. Income Tax Officer referred to supra. Further, the Proviso of Section 129 also provides that the assessee concerned may demand that before the proceedings so continued, the previous proceedings or any part thereto be reopened or that, before any order of assessment is passed against him, he be re-heard. This opportunity is also not being granted to the assessee.

This being so, the issues in this appeal are restored to the file of the Assessing Officer for re-adjudication after granting the assessee the reasons recorded for the purpose of reopening and following the principles laid down by the Hon'ble Supreme Court in the case of GKN Drivenshafts (India) Limited vs. Income Tax Officer referred to supra. The assessee shall also be heard as per the provisions provided u/s.129 of the Income Tax Act, 1961.

11. In the result, the appeal of the assessee in I.T.A. No.96/Chny/2020 is partly allowed for statistical purpose.

Order pronounced in the open Court on 12th March, 2020 in Chennai.

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 12th March, 2020

IA, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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