

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 624/CHNY/2019  
निर्धारण वर्ष / Assessment Year: 2014-15

**Smt. Luni Devi,**  
30, Muthukrishna Street,  
Chennai – 600 079.

**The ACIT,**  
v. Non-Corporate Circle – 5,  
Chennai.

**PAN: ABCPL 7154P**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri Sridhar, Advocate  
: Shri Suresh Periasamy, JCIT

सुनवाई की तारीख/Date of Hearing : 11.03.2021  
घोषणा की तारीख/Date of Pronouncement : 28.04.2021

**आदेश /O R D E R**

**Per G. MANJUNATHA, AM:**

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals)-5, Chennai, dated 07.02.2018 and pertains to assessment year 2014-15.

2. The assessee has raised the following grounds of appeal:-

1. The order of the commissioner of Income Tax (Appeals) dated 5, Chennai 07.02.2018 in I.T.A. No.240/2010-11/CIT(A)- 5/2016-17 for the above mentioned Assessment year is contrary to law, facts, and in the circumstances of the case.
  2. The CIT (Appeals) erred in sustaining the addition of Rs.1,03,00,000/- on the presumption of acceptance both at the time of survey and at the assessment proceedings pertaining to stock variation and unreconciled sundry creditors balances in the computation of taxable total income without assigning proper reasons and justification.
  3. The CIT (Appeals) failed to appreciate that the concession/surrender of additional income at the time of survey would not justify the automatic addition in the computation of taxable total income while completing the consequential assessment and further ought to have appreciated that in the absence of impounded materials having direct nexus with the addition made, there could not be any legal justification for making mechanical addition in the computation of taxable total income.
  4. The CIT(Appeals) erred in not adjudicating the issue relating to the addition of Rs.1,36,290/- being the estimated quantum at 20% of the total debit of cartage and coolie expenses without assigning proper reasons and justification.
  5. The CIT(Appeals) went wrong in recording the findings from para 6.7 of order without assigning proper reasons and justification.
  6. The CIT(Appeals) failed to appreciate that there was no proper opportunity given before completing the appellate proceedings and ought to have appreciated that any order passed in violation of the principles of natural justice should be reckoned as nullity in law.
  7. The appellant craves leave to file additional grounds/arguments at the time of hearing.
3. The brief facts of the case are that the assessee is engaged in the business of trading in stainless steel under the

proprietorship firm of M/s. Monica Metals, filed her return of income for the assessment year 2014-15 on 29.11.2014 declaring total income of Rs.15,15,600/-. In the case of the assessee, a survey was conducted in the business premises on 11.07.2013. Under the course of survey, the assessee has offered additional income of Rs.1,03,00,000/- over and above the returned income for the assessment year 2014-15. Therefore, based on the admission of the assessee, assessment has been completed u/s.143(3) of the Act on 31.12.2016 determining the total income at Rs.1,19,51,890/- after making addition towards difference in stock-in-trade and unreconciled sundry creditors amounting to Rs.1,03,00,000/- and disallowance of cartage and cooly expenses amounting to Rs.1,36,290/-.

4. Being aggrieved by the assessment order, assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee neither appeared nor furnished any details, which is evidenced from the fact that 'despite 3 dates of hearing was provided to the assessee, assessee could not appear before the CIT(A) and explain her case'. Therefore, the CIT(A) has disposed off appeal filed by the assessee 'exparte' and confirmed additions

made by the AO towards difference in stock-in-trade and unreconciled sundry creditors and disallowance of cartage and cooly charges. Aggrieved with CIT(A) order, assessee is in appeal before us.

5. The Id.AR for the assessee at the time of hearing submitted that there is a delay of 337 days in filing appeal before the Tribunal for which necessary petition for condonation of appeal along with affidavit has been filed explaining the reasons for delay in filing the appeal. The Id.AR further submitted that the delay in filing the said appeal was neither willful nor deliberate but due to circumstances beyond the control of the assessee because the assessee was wrongly advised not to file appeal against the order of Id.CIT(A). However, when she has contacted the present counsel, they have advised her to file appeal and accordingly she has taken up steps to file appeal, which resulted in delay of 337 days. Therefore, delay may be condoned to decide the issues on merits.

6. The Id.DR on the other hand strongly opposing petition filed by the assessee for condonation of delay submitted that reasons

for not filing appeal within due date specified under the Act, did not come under the reasonable cause and hence, delay in filing the appeal should not be condoned.

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. We find that the counsel who was handling the tax matters was not properly advised the assessee to file appeal before the Tribunal and further, when she contacted the present counsel, he has advised her to file appeal because she had strong case on merits in respect of additions made by the AO towards difference in stock-in-trade and unreconciled sundry creditors and disallowance of cartage and cooly charges. We find that the reasons given by the assessee that there is a wrong advise from the counsel for not filing the appeal comes under the reasonable cause and hence after considering the fact that the Id.CIT(A) has dismissed the appeal filed by the assessee ex-parte without giving reasonable opportunity of hearing to the assessee, we deem it appropriate to condone the delay in filing the appeal to decide the issues involved in appeal on merits. Hence, the delay

in filing the appeal is condoned and the appeal is admitted for hearing.

8. Insofar as the arguments of the Id.counsel that the Id.CIT(A) has decided the appeal ex-parte behind the back of the assessee without providing reasonable opportunity of hearing, we find that although, the Id.CIT(A) has given three dates of hearings, but the assessee submits that the counsel appearing for the tax matters could not appear before the CIT(A) for the reasons best known to him. Therefore, non-appearance of the counsel on the dates fixed for hearing should not be attributable to the assessee when the assessee has explained before the authorities that she was not aware of the dates of hearing of the appeal. Further, it is a well settled principle of law that when an appeal is dismissed on technical grounds, a meritorious case may be goes out of the judicial scrutiny. Therefore, the courts while deciding the issue should adjudicate the issue on merits instead of throwing out a appeal filed by the appellants on technical grounds. Therefore, considering the fact that the Id.CIT(A) has disposed off the appeal filed by the assessee ex-parte without hearing her arguments, we are of the considered view that one more opportunity needs to be

given to the assessee to explain her case with necessary evidences. Hence, the appeal filed by the assessee is set aside to the file of the CIT(A) and direct the CIT(A) to decide the appeal on merits after giving reasonable opportunity of hearing to the assessee. Needless to say, the assessee shall appear before the CIT(A) without seeking any adjournment unless otherwise required.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the court on 28<sup>th</sup> April, 2021 at Chennai.

Sd/-

(महावीर सिंह)

**(Mahavir Singh)**

उपाध्यक्ष /Vice President

Sd/-

(जी. मंजुनाथ)

**(G. Manjunatha)**

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 28<sup>th</sup> April, 2021

**RSR**

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.            |