

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी मंजूनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A No.319/Chny/2020
Assessment Year: 2011 - 2012

Shri. A.S. Abdul Rehman,
No.59, C.K. Complex,
Karayanchavadi Post,
Poonamallee Taluk, T.N
Pin Code – 600 056.

The Income Tax Officer,
Non-Corporate Ward-8(5),
Vs. Nungambakkam,
Chennai – 600 034.

[PAN: AJEPA 9347F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Mr. P. Rajasekaran, C.A.
: Mr. G. Suresh Periasamy, JCIT

सुनवाई की तारीख/Date of Hearing

: 19.07.2021

घोषणा की तारीख /Date of Pronouncement

: 22.07.2021

आदेश / ORDER

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is against the order of the learned Commissioner of Income Tax, (Appeals)-9, Chennai in I.T.A. No.34/CIT(A)-9/2018-19 dated 12.06.2019 relevant to the Assessment Year 2011 - 2012.

2. There is a delay of 183 days in filing this appeal. The Assessee had filed an affidavit, wherein he has stated detailed reasons for the delay and had requested that the same may be condoned. The reasons given by the Assessee is extracted as under:

“The appellant preferred an appeal on 28.01.2019 before the Hon’ble Commissioner of Income Tax (Appeals) – 9 with the following documents, viz. Form – 35 along with statement of facts, grounds of appeal, assessment order, demand notice, fees paid challan. However, while attaching the documents for assessment order, notice of demand and appeal fee of Rs.1000, due to inadvertent clerical mistake on the part of the data entry operator, these three documents, viz. assessment order, notice of demand u/s.156 and the appeal fee relating to another assessee viz. Shri A. Elumalai (whose assessment order was also passed in December 2018) were attached with the above said appeal of the appellant. The appellant was not given notice for rectifying the above apparent mistake by the office of the Commissioner of Income Tax (Appeals). The Hon’ble Commissioner of Income Tax (Appeals) has posted the case on 05.06.2019 for which the appellant’s representative wanted to meet the Commissioner of Income Tax (Appeals) and to submit the related documents and rectify the above mentioned apparent mistake in filling of the appeal papers. The Commissioner of Income Tax (Appeals) without giving any opportunity either for rectifying the above said apparent mistake or for submitting the facts of the case hurriedly passed the order dismissing the appeals on 12.06.2019. In fact, on the date of the hearing on 05.06.2019, the Authorized Representative was present in the waiting hall until 7:00 PM and then sent an adjournment online by 7:14 PM. Copy of which is enclosed. The rectified appeal papers with correct attachments were submitted to the office of the Commissioner of Income Tax (Appeals) on 01.07.2019 in person. To my surprise, I have received my order dated 12.06.2019 informing that the appeal was dismissed on the basis of apparent / technical mistakes.

The appellant preferred a miscellaneous / rectification petition dated 31.07.2019 (copy is enclosed) along with a fee of Rs.50/-. The appellant was waiting for six months to get a reply from the Commissioner of Income Tax (Appeals) for the rectification petition but was not given any notice / order. The appellant was advised by his Counsel to prefer an appeal before the Hon’ble Income Tax Appellate Tribunal and accordingly the appellant filed the appeal

papers in Form – 36 along with the Statement of Facts, Grounds of appeal and requisite fee of Rs.10,000/- on 10.02.2020. The appellant was under the bonafide impression that the Commissioner of Income Tax (Appeals) would give an opportunity to rectify the apparent mistakes and pass the order.

The appellant submits that due to the above said circumstances, the alleged delay in 183 days in filing of appeals before the Hon'ble Income Tax Appellant Tribunal is neither willful nor wanton. The appellant prays that the delay in filing appeals before the Hon'ble Income Tax Appellant Tribunal be condoned and justice be rendered.”

3. From the above reasons given by the Assessee, it is to understand that the learned Commissioner of Income Tax (Appeals) had dismissed the appeal on technical grounds against which the Assessee had filed a petition u/s.154 of the Income Tax Act, 1961 and had waited for some period and ultimately this appeal was filed.

We find from the reasons given by the Assessee that there is sufficient cause to condone the delay. Accordingly, the delay is condoned.

4. As far as the merits of the case is concerned, the learned Commissioner of Income Tax (Appeals) had dismissed the appeal of the Assessee on the ground that requisite fee was not paid. We find that in the interest of justice, the appeal of the Assessee has to be adjudicated by considering the merits of the case.

Accordingly, we set aside the order passed by the Commissioner of Income Tax (Appeals) and remit the matter back to the file of the learned Commissioner of Income Tax (Appeals) to adjudicate the appeal in accordance with law.

5. In the result, the appeal of the Assessee in I.T.A. No.319/Chny/2020 is allowed for statistical purpose.

Order pronounced on 22nd July, 2021 in Chennai.

Sd/-

(श्री जी मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 22nd July, 2021

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