

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1068/CHNY/2019

निर्धारण वर्ष /Assessment Year: 2007-08

**M/s. Srichakra Merchandising  
Pvt. Ltd.,**  
No.723/Am GNT Road,  
Kottakarai, Gummidipoondi,  
Thiruvallur, Chennai – 601201.

**The ITO,**  
v. Corporate Ward-6(4)  
Chennai - 34.

**PAN : AAJCS 3541C**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri N.V. Balaji, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 11.10.2021

घोषणा की तारीख/Date of Pronouncement

: 11.10.2021

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VP:**

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-15, Chennai in ITA No.23/2017-18/CIT(A)-15 dated 30.10.2018. The Assessment was framed by the Income Tax Officer, Corporate Ward 6(4), Chennai U/s 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act') for the A.Y. 2007-08 vide order dated 30.12.2016.

2. At the outset, it is noticed that the appeal is time barred by 63 days and the assessee has filed condonation petition by stating reason that the assessee was not keeping good health and have fallen sick often during this period. The reasons submitted in affidavit reads as under:-

“4. I submit I am the authorized signatory of the Petitioner as such I manage the substantial affairs of the Petitioner. I submit that I take care of the entire taxation, compliance and finance of the Petitioner company. I further submit that I have not been keeping good health and I have been falling sick often. Further I was even hospitalized briefly during February 2019 and therefore could not attend office. I further submit that I am the person taking care of tax and compliances. I submit due to my ill health and not attending office, the order of the CIT(A) was not communicated to the advocate’s office to file further appeal. I submit once I started attending office, I immediately took steps to file the appeal.

5. I submit that the delay is only on account of my ill health as stated above. I submit that the delay in filing the appeal is neither willful nor wanton and is only due to afore mentioned reason.”

2.1 The Id. senior Departmental Representative opposed to condonation of delay.

2.2 After hearing both the sides, we are of the view that the reason stated seems to be reasonable and hence, we condone the delay and admit the appeal.

3. At the outset, the Id.counsel for the assessee Shri N.V. Balaji took us through the order of CIT(A) dated 31.10.2018 for the relevant assessment year 2007-08 and read out para 4.3.2 as under :-

“4.3.2 The CIT(A) posted hearing on 13-8-2018 and 27-8-2018. The appellant’s AR sought adjournment to September, 2018. Accordingly, the final hearing was posted on 25-0-2018, which was duly served on the appellant. However, no written submission has been filed till date. Since the issue involves reconciliation of books of accounts with the material collected by the AO through enquiry, the primary onus is on the appellant to reconcile the difference. Since the appellant has failed to discharge is primary onus, I concur with the AO's addition and the same is confirmed. The appellant’s grounds are dismissed.”

The Id. counsel stated that the CIT(A) has dismissed the appeal of assessee practically ex-parte and without a speaking order. The Id. counsel for the assessee stated that the CIT(A) is a quasi judicial authority and in the statute of Income Tax Act, CIT(A) cannot dismiss the appeal for default expressly or by inevitable implication, but the appellate authority has to decide the appeal on merits. The appellate authority has no jurisdiction to dismiss the appeal for default but he is bound to decide the appeal on merits even in the absence of the assessee. This view has been taken by the Hon’ble High Court

of Madras in the case of Southern Steel Industries vs. AAC (CT), [1996] 101 STC 273 (Mad). Hence, the Id.counsel stated that this order should be set aside and matter may be remanded back to the file of the CIT(A) for fresh adjudication after allowing reasonable opportunity of being heard to the assessee.

4. The Id. senior Departmental Representative opposed to setting aside of the order of CIT(A) because the CIT(A) has given reasonable opportunity of being heard to the assessee.

5. We have heard rival contentions and gone through the facts and circumstances of the case. Admittedly and practically, the order of the CIT(A) is ex-parte and non-speaking. We noted that the CIT(A) has also stated in his order that issue involved is regarding reconciliation of books of accounts with the material collected by the AO through enquiry. We noted that now before us the assessee has filed the following details:-

Sl. No.	Particulars
1.	Assessment Order under section 143(3) dated 31.12.2009
2.	Appellate Order under section 250(6) dated 31.10.2015
3.	Order of the Income Tax Appellate Tribunal in ITA 20/Mds/2016 dated 10.03.2016
4.	VAT Assessment order dated 30.07.2010

5.	Debit note raised by the assessee on Sujana Universal and acknowledgement by Sujana Universal
6.	Letter of the Assessing Officer dated 05.12.2016 calling for information
7.	Financial statements of the appellant for the year ended 31.03.2007
8.	Ledger account of Sujana Universal Limited for the period 01.01.2007 – 31.03.2007
9.	Summary of Purchase and Sales for the period 01.04.2006-31.03.2007
10.	Purchase Register and Summary for the period 01.01.2007-31.03.2007
11.	Summary of Sales
12.	VAT Returns for the period Jan, Feb and March 2007

The assessee has now filed financial statements, ledger accounts of Sujana Universal Ltd., summary of purchase and sales for the relevant year, purchase register, summary of sales and VAT returns, reconciled books of accounts. These are vital and important documents which needs verification by the CIT(A). Hence, we admit these evidences and remand it back to the file of the CIT(A). We are of the view that the CIT(A) is a quasi judicial authority and in the statute of Income Tax Act, CIT(A) cannot dismiss the appeal for default expressly or by inevitable implication, but the appellate authority has to decide the appeal on merits. The appellate authority has no jurisdiction to dismiss the appeal for default but he is bound to decide the appeal on merits even in the absence of the

assessee. We further noted that, this view has been taken by the Hon'ble High Court of Madras in the case of Southern Steel Industries vs. AAC (CT), [1996] 101 STC 273 (Mad). Hence, dismissal for default by CIT(A) is bad in law and accordingly, we set aside the order of CIT(A). The appeal is remanded back to the file of CIT(A) for fresh adjudication, after allowing reasonable opportunity of being heard to the assessee. We order accordingly.

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

Order pronounced in the open court on 11<sup>th</sup> October, 2021 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**  
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 11<sup>th</sup> October, 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.            |