

आयकर अपीलीय अधिकरण, 'सी' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' 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./I.T.A.No.557/Chny/2020

(निर्धारणवर्ष / Assessment Year: 2007-08)

M/s. Jairam Hi-tech Products No.17/1, Industrial Estate Ekkatuthangal, Chennai-600 032.	Vs	The Joint Commissioner of Income Tax, Business Range-III Chennai-600 034
PAN: AACFJ 9145K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	None
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. G.Johnson, Addl.CIT

सुनवाई की तारीख/Date of hearing	:	30.11.2021
घोषणा की तारीख /Date of Pronouncement	:	08 .12.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the learned Commissioner of Income Tax (Appeals)-9, Chennai dated 03.01.2020 and pertain to assessment year 2007-08.

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

"1. The order of the learned CIT (A):

(a) Is contrary law, facts and circumstances of the case.

(b) Impugned order is nullity in view of gross violation of principles of natural justice, legitimate expectation and fair procedure

(c) Grossly erred in confirming penalty exparte

(d) Failed to exercise discretion vested on the learned CIT(A).

(e) Failed to appreciate that the transaction between relatives

(f) Notice is invalid since conditions are not fulfilled

(g) There exists no satisfaction recorded in the notice and hence nullity in law

(h) There exists no breach of law in terms of section 269T

2. The learned illegal since respectful to non exercise void CIT (A) ought to have appreciated that notice issued is section 269T is obedient, docile, submissive, dutiful and section 273B of the income tax Act and in the absence of reason for of discretion conferred in the said section, notice is illegal, null and void.

3. The learned CIT (A) ought to have appreciated that the credit in the sum of Rs. 5,00,000 was repaid by way of RTGS drawn from Bank on Date 06/12/2019 (Ref No: CTH8754234) and credited in the account of the recipient and hence the levy of penalty had become otiose.

The appellant craves leave to file additional grounds”

3. Brief facts of the case are that the assessee is engaged in the business of machining works for auto and other engineering items, filed its return of income for the assessment year 2007-08 on 06.10.2007 declaring total income of ₹ 5,45,320/-. The case has been subsequently selected for scrutiny and assessment has been completed u/s. 143(3) of the Act. Thereafter, the Assessing Officer initiated penalty 271E r.w.s 274 of the Act on 19.12.2013 and levied penalty of Rs.5 lakhs. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has received loan of Rs.10 lakhs from Mrs.Karunaiammal, who is relative of partner and the assessee admitted undisclosed income to the extent of Rs.5 lakhs, out of said loan of Rs.10.00 lakhs. During the course of penalty proceedings also, the

assessee has not produced any evidence in regard to repayment of Rs.5 lakhs, but it was the contention of the assessee that no repayment was made and therefore, there is no contravention of provisions of section 269T of the Act and hence, penalty could not be levied u/s.271E of the Act. According to the Assessing Officer, the assessee has failed to explain as to how loan amount was squared off and thus, the Assessing Officer has levied penalty of Rs.5 lakhs u/s.271E of the Act.

4. The assessee carried the matter in appeal before the First Appellate Authority. The learned Commissioner of Income Tax (Appeals) has dismissed the appeal filed by the assessee ex-parte for non-appearance, i.e out of five opportunity of hearing, on two occasions the assessee neither appeared or sought adjournment. The learned CIT(A), however discussed the issue of levy of penalty of Rs. 5 lakhs by the Assessing Officer u/s.271E of the Act, and observed that the assessee has not furnished any confirmation from loan creditor regarding repayment of loan and thus, rejected contention of the assessee that repayment was not made and therefore, there is

no contravention of provisions of section 269T of the Act for want of documentary evidence. Aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

5. None appeared for the assessee. We have heard the learned D.R., perused the material available on record and gone through the orders of authorities below. We find that the learned CIT(A) has disposed off the appeal filed by the assessee ex-parte for non-prosecution as the assessee neither appeared nor filed any details to justify its case. No doubt, it is the obligation of the person who files appeal, go before the authorities, when the appeal is called for hearing to justify its case. In case, the assessee did not choose to appear before the authorities, then the appellate authority left with no option but to dispose off the appeal on the basis of materials available on record, but said appeal needs to be disposed off on merits on the basis of materials available on record. In this case, on perusal of the order of the learned CIT(A), we find that the learned CIT(A) has disposed off the appeal for non-appearance without giving sufficient opportunity of hearing to the assessee. Therefore, in the

interest of justice, we are of the considered opinion that the issue needs to go back to the file of the learned CIT(A) to give one more opportunity to the assessee to file necessary evidence in support of its case. Hence, we set aside the impugned order and remit the matter back to the file of learned CIT(A) and direct him to reconsider the issue after providing adequate opportunity of hearing to the assessee. It is needless to say that the assessee shall go before the CIT(A) without seeking any adjournment unless or otherwise warrants under extreme circumstances and file necessary documentary evidence in support of its claim.

6. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 8th December, 2021

Sd/-

(महावीर सिंह)

(Mahavir Singh)

उपाध्यक्ष/ Vice-President

चेन्नई/Chennai,

दिनांक/Dated 8th December, 2021

DS

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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