

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos.3119 and 3120/Chny/2019  
निर्धारण वर्ष/Assessment Year: 2005-06

Shri Subhash Chandra Reddy  
Mother & Representative Assessee by  
Smt. K. Subha Pradha, C/o. S.  
Sendamarai Kannan, Advocate, 104,  
22<sup>nd</sup> Street, Ashtalakshmi Nagar Third  
Main, Alapakkam, Chennai 600 116.

Vs. The Assistant Commissioner of  
Income Tax,  
Non Corporate Circle 1,  
Chennai 600 034.

**[PAN:AKYPK7909C]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sendamarai Kannan, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri AR V Sreenivasan, Addl. CIT  
सुनवाई की तारीख/ Date of hearing : 24.01.2022  
घोषणा की तारीख /Date of Pronouncement : 25.01.2022

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

Both the appeals filed by the assessee are directed against separate orders of the Id. Commissioner of Income Tax (Appeals) 2, Chennai both dated 27.09.2019 for the assessment year 2005-06.

**I.T.A. No. 3119/Chny/2019 [AY: 2005-06]**

2. When this appeal is taken up for hearing, the Bench has observed that the assessee has not appeared before the Assessing

Officer. Therefore, the Assessing Officer has passed the assessment order under section 144 r.w.s. 147 of the Income Tax Act, 1961 ["Act" in short] on 13.03.2013. Even before the Id. CIT(A) also, the assessee has not filed any details and therefore, the Id. CIT(A) has simply dismissed the appeal of the assessee. When the Bench asked the Id. Counsel for the assessee as to why the assessee or his authorized representative has not put appearance before the Assessing Officer or the Id. CIT(A), the Id. Counsel for the assessee has submitted that the assessee is a NRI and he has not received any notice of hearing and submitted that one more opportunity should be given to the assessee to substantiate his case before the Assessing Officer.

3. On the other hand, the Id. DR has not raised any objection.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Keeping in view of the above facts and circumstances, we find that both the authorities below have passed the orders without considering any materials on merits. The assessee has not filed any details before the authorities below since the notice of hearing issued by the Department has not reached the assessee. Keeping in view of the principles of

natural justice, we are of the view that the appeal has to be considered on merits of the case by affording an opportunity of being heard to the assessee to substantiate his case before the Assessing Officer. Accordingly, we set aside the orders of authorities below and remit the matter back to the file of the Assessing Officer to decide the case afresh in accordance with law after allowing meaningful opportunity of being heard to the assessee. Thus, the appeal filed by the assessee is allowed for statistical purposes.

**I.T.A. No.3120/Chny/2019**

5. This appeal relates to levy of penalty under section 271(1)(c) of the Act against quantum addition. Since we have set aside the orders of authorities below and directed the Assessing Officer to decide the appeal on merits, in our opinion, the quantum addition has no legs to stand and the penalty levied by the Assessing Officer under section 271(1)(c) of the Act stands cancelled. However, it is open to the Assessing Officer to levy penalty, if any, after deciding the quantum addition afresh in accordance with law. Accordingly, the appeal filed by the assessee is allowed.

6. In the result, the appeal filed by the assessee in I.T.A. No.

3119/Chny/2019 is allowed for statistical purposes and the appeal in I.T.A. No. 3120/Chny/2019 is dismissed.

Order pronounced on 25<sup>th</sup> January, 2022 at Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 25.01.2022

Vm/-

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.