

आयकर अपीलिय 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 Nos. 117 & 118/Chny/2018  
(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

<b>M/s. Annutam Constructions Pvt Ltd.,</b> No: 4/318, Marg Axis, Old Mahabalipuram, Kottivakkam, Chennai – 600 041.	<b>बनाम/</b> Vs.	<b>Income Tax Officer,</b> Corporate Ward -1(1), Chennai – 600 006.
स्थायी लेखा सं./जीआइ आर सं./ <b>PAN/GIR No. AAGCA-2610-P</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri D. Anand, Advocate
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri Varuvooru Sreedhar, Addl. CIT

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	07.06.2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	15.06.2022

**आदेश / O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

These two appeals by assessee are arising out of the different orders of Commissioner of Income Tax (Appeals)-5, Chennai in ITA Nos. 17 & 18/CIT(A)-5/2013-14 vide orders of even date 23.10.2017. Assessments were framed by the Income Tax Officer, Company Ward -1(1), Chennai for the AYs 2010-11 &

2011-12 u/s. 143(3) of the Income-tax Act, 1961 (herein after referred to as 'the Act') vide orders dated 28.03.2013 & 28.03.2014.

2. At the outset, it is noted from the records that the appeals filed by the assessee i.e., both the appeals are delayed by 12 days as noted by Registry. The assessee filed affidavit stating the reason and facts that the orders of CIT(A) dated 23.10.2017 was received by assessee only on 29.10.2017 and the appeal should have been filed within 60 days i.e., on or before 29.12.2017 but actually appeal was filed on 09.01.2018 with a delay of 12 days. Ld. Counsel explained from the affidavit filed by assessee that the delay occurred for the reason that the accountant of the assessee company who was handling the tax matter resigned and was replaced by a new accountant who joined late and came in possession of appeal papers only during the first week of January of 2018. Thereafter, the appeals were prepared and filed with a delay of 12 days. When these facts were confronted to Ld. Sr. DR, he could not controvert the above fact situation. We find the cause reasonable and accordingly, condone the delay and admit the appeals.

3. Ld. Counsel for the assessee stated that the order by the CIT(A) is exparte and even the order is not a speaking order as the CIT(A) has simply confirmed the order of the CIT(A). He drew our attention to the order of the CIT(A) for AY 2010-11 which reads as under:

*" 6.6 The assessee did not bring any material on record to prove that the interest paid (Rs. 2,71,46,615/-) was laid out or expended wholly and*

*exclusively for the purpose of making or earning the interest income of Rs. 2,71,73,385/-.*

*For the above stated reasons and respectfully following the above stated case-laws the disallowance of interest paid (Rs. 2,71,46,615/-) and bringing the entire interest income of Rs. 2,71,73,385/- to tax is upheld."*

4. Ld. Counsel stated that once the order of the CIT(A) is *ex parte* and not speaking order deserves to be set aside and matter be remanded back to the file of the CIT(A) who will pass speaking order after considering all the materials and also allowing reasonable opportunity of being heard to the assessee. The above fact situation could not be controverted by Ld. Sr. DR.

5. After hearing both the sides and going through the facts of the case, we are of the view that the appellate authority has to decide the appeal on merits and not to dismiss it for default. If the CIT(A) took up the appeal for decision in the absence of assessee, he has to pass a speaking order. The statute i.e., that the Income-tax Act authorizes the CIT(A) to dismiss the appeal for default or by inevitable implications, who has to decide the appeal on merits and not to dismiss it for default simpliciter.

6. Before us, Ld. Counsel for the assessee in the present case contended that the assessee could not attend because, the assessee did not receive the notices as noted by CIT(A) in its order and in the absence of any information the assessee could not file any details in regard to interest paid which was claimed as expenses from the business income. Now, Ld. Counsel for the

assessee undertakes to file the details before Ld. CIT(A) at the first instance as and when appeal was fixed for hearing. We, accordingly set aside the orders of the CIT(A) in both the appeals and remand the matter back to the file of the CIT(A) for fresh adjudication. Needless to say, the Ld. CIT(A) will allow reasonable opportunity of being heard to the assessee. Both appeals of the assessee are allowed for statistical purposes.

7. In the result, both the appeals filed by the assessee in ITA No. 117 & 118/Chny/2018 are allowed for statistical purposes.

Order pronounced on 15<sup>th</sup> June, 2022.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह )

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई / Chennai; दिनांक / Dated : 15-06-2022

**JPV**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded 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