

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' 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.: 2379/CHNY/2019

निर्धारण वर्ष /Assessment Year: 2016-17

**M/s. SP Coal Resources Pvt.
Ltd.,**
SMJ Parrys Plaza, 4th Floor,
Old No.28, New No.12,
2nd Line Beach Road,
Chennai – 600 001.

The ACIT,
v. Corporate Circle 6(2),
Chennai.

PAN : AAOCS 3138G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Anandd Babunath, FCA
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 13.06.2022

घोषणा की तारीख/Date of Pronouncement : 15.06.2022

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.178/2018-19/CIT(A)-15 dated 26.06.2019. The Assessment was framed by the ACIT, Corporate Circle 6(2), Chennai U/s 143(3) of the

Income Tax Act, 1961 (hereinafter 'the Act') for the A.Y. 2016-17 vide order dated 10.12.2018.

2. At the outset, the Id.counsel for the assessee before us stated that the issue contested before CIT(A) was as under:-

- a) Disallowance u/s.40A(3)
- b) Unexplained cash credit u/s 68
- c) Disallowance u/s 40(a)(ia)

The Id.counsel then took us through the order of CIT(A) and stated that the CIT(A) has not adjudicated the appeal and dismissed the appeal as un-admitted because there was a delay of 11 days. He narrated that the CIT(A) dismissed as the assessee could not file delay condonation application supported by documentary evidences. He then stated that the CIT(A) first dismissed the appeal as un-admitted then went on adjudicating the appeal on merits also. He took us through the entire CIT(A) order. When these facts were confronted to Id. Senior DR, he supported the orders of lower authorities.

3. After hearing rival contentions and going through the facts of the case, we set aside the order of CIT(A) for the reason that he cannot dismiss the appeal as un-admitted and simultaneously go on to decide the issues on merits. However, it seems that there is a delay of 11 days only and he has not allowed opportunity of being heard to the

assessee to file condonation petition as well as supporting documents. Hence, we set aside the order of CIT(A) and remand the matter back to his file for first deciding the delay condonation and allow opportunity to file condonation petition on the next date of hearing. In case, the CIT(A) condones the delay, then he can decide the issues on merits as per law after allowing reasonable opportunity of being heard to the assessee.

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

Order pronounced in the open court on 15th June, 2022 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 15th June, 2022

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. |