

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'A' 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.: **30/CHNY/2021**

निर्धारण वर्ष /Assessment Year: 2011-12

**M/s. Deivam Motors,**  
Rep. by its Partner -  
Shri K.S. Santhosh Kumar,  
No.40/170, North Car Street,  
Srivilliputtur

**The Income Tax Officer,**  
vs. Ward 1(1),  
Virudhunagar – 626 001.

**PAN: AAFFD 5475M**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri T. Ramesh Kutty, Advocate  
For Shri B. Sivaraman, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 30.08.2022

घोषणा की तारीख/Date of Pronouncement

: 30.08.2022

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-1, Madurai in ITA No.0518/2014-15 dated 20.08.2019. The assessment was framed by the ITO, Ward 1(1), Virudhunagar for the assessment year 2011-12 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 27.03.2014. The penalty under dispute u/s.271(1)(c) of

the Act was levied by the ITO, Ward 1(1), Virudhunagar vide order dated 26.09.2014.

2. At the outset it is noticed that this appeal is time barred by 386 days and assessee has filed condonation petition stating the reasons for delay supported by affidavit. As per Form 36, the date of communication of order appealed against i.e., the order of CIT(A) was received by assessee on 22.11.2019. The assessee filed appeal before Tribunal only on 11.02.2021 thereby, delay of 386 days. The assessee before us stated that lockdown was imposed due to spread of Covid-19 pandemic w.e.f. 25.03.2020. Upto that date, the delay was only 64 days. The Id.counsel stated that the assessee was under stress as the assessee firm was dealer in Hero Honda vehicles and due to termination of Hero Honda dealership and misunderstanding between the partners, the assessee could not file appeal. There was another reason that the assessee deponent properties were attached by the Tax Recovery Officer dated 27.09.2020 and due to that also, the assessee could not file appeal for these 64 days. Thereafter, nationwide lockdown was imposed due to Covid 19 pandemic and appeal could not be filed against the order of CIT(A) dated 20.08.2019, which was received by assessee only on 22.11.2019. Hence, it was requested that the delay of 386 days be condoned and render justice. On the other hand, the Id.Senior DR opposed the condonation of delay.

2.1 After hearing both sides and going through the facts narrated in the condonation petition and reasons stated in the affidavit, we are convinced that there is a reasonable cause for not filing appeal within time. Hence, we condone the delay and admit the appeal.

3. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO in levying penalty u/s.271(1)(c) of the Act amounting to Rs.7,48,707/-.

4. We have heard rival contentions and gone through facts and circumstances of the case. We have noticed that the CIT(A) posted the matter for hearing on atleast 14 times but none was present except one Shri K. Suresh Kumar, CA appearing on 25.10.2016 and 11.11.2016. The CIT(A) decided the appeal ex-parte dismissing the appeal. Even, we noticed from the penalty order passed u/s.271(1)(c) r.w.s. 274 of the Act dated 26.09.2014 that the assessee could not file details before AO except filing written submissions dated 25.09.2014. We have noticed that the assessee is actually non-cooperating with the authorities in providing details or he is totally non-cooperative. Hence, the CIT(A) has no alternative except to pass ex-parte order. When these facts were confronted to Id. counsel for the assessee, he only pleaded mercy. On the other hand, the Id. Senior DR requested that the order of CIT(A) be confirmed.

5. After hearing rival contentions and going through the facts, we are of the view that in the interest of justice, one more opportunity be provided to assessee to represent its case before CIT(A) subject to a cost of Rs.10,000/- to be paid to Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras. The assessee will pay this cost and produce the challan before CIT(A). In term of this, we set aside the order of CIT(A) and remand the matter back to the file of the CIT(A) for fresh adjudication.

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

Order pronounced in the open court on 30<sup>th</sup> August, 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 30<sup>th</sup> August, 2022

**RSR**

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.            |