

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, 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./ITA No.: **74/CHNY/2021**
निर्धारण वर्ष /Assessment Year: 2013-14

Smt. Adithyapan Amutha,
No.590, 3rd Street, P.P. Gardens,
Aminjikai,
Chennai – 600 029.

The ACIT,
v. Non-Corporate Circle 10(1),
Chennai.

PAN: AOSPA 1524K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: None
: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 13.09.2022

घोषणा की तारीख/Date of Pronouncement

: 13.09.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-12, Chennai in ITA No.216/CIT(A)-12/2016-17 dated 19.12.2018. The assessment was framed by the ACIT, Non-Corporate Circle 10(1), Chennai for the

assessment year 2013-14 u/s.143(3) of the Income-Tax Act, 1961 (hereinafter the 'Act') vide order dated 22.03.2016. The penalty under dispute was levied by the ACIT, Non-Corporate Circle 10(1), Chennai u/s.271(1)(c) of the Act vide order dated 28.09.2016.

2. At the outset, it is noticed that this appeal is barred by limitation by 765 days. The order appealed against was communicated to the assessee on 19.12.2018 and the appeal before the Tribunal was filed only on 23.03.2021. The assessee filed condonation petition supported by affidavit stating that although the order of CIT(A) dated 19.12.2018 was sent electronically on 19.12.2018 itself, but assessee being a non-computer literate lady did not receive any order, as the same was sent through e-mail. It was claimed by assessee that "some of the mails from the Department invariably gets lodged in spam, so much so that I do not have tract of records" and she was not aware about the penalty order at all. The assessee wanted advice to take benefit of Vivad Se Viswas Scheme so her Chartered Accountant enquired about the status of appeal and further proceedings in that case. Eventually when enquiry was made from the office of CIT(A), the penalty order was received by assessee's CA and accordingly on his advice, appeal

was filed belatedly. Even half of the period is during Covid-19 and assessee never received or never served any notice regarding levy of penalty nor raised any demand on account of this penalty by the Department. Hence, it was contended that the appeal be admitted and delay be condoned. On the other hand, the Id. Senior DR could not controvert the above fact situation.

2.1 After hearing Id.Senior DR and going through the records, we are of the view that the reason given by assessee seems quite reasonable and hence, we condone the delay and admit the appeal.

3. The only issue in this appeal of assessee is as regards to the order of CIT(A) levying penalty u/s.271(1)(c) of the Act.

4. When this appeal was called for hearing, despite service of notice, none is present from assessee's side, however an adjournment petition was filed by assessee's Chartered Accountant Dr. L. Natrajan for gathering particulars essential for effective representation from the party. We have gone through the order of CIT(A) and noticed that the AO has levied penalty in respect of following three items:-

- (i) Unaccounted sales of Rs.17,75,004/-
- (ii) Unexplained credit as loan Rs.12,50,000/-
- (iii) Unexplained expenses at Rs.3,29,880/-

We have gone through the order of CIT(A), who has confirmed the penalty in respect of item No.(i) unaccounted sales of Rs.17,75,004/- & (iii) unexplained expenses at Rs.3,29,880/- and thereby confirmed the levy of penalty on the addition of Rs.27,75,004/-. We noted that the CIT(A) has confirmed the penalty simpliciter by recording the following findings in para 5.1 & 5.3 as under:-

5.1 Penalty of Rs.20,49,600/- has been levied on income of Rs.33,54,884/-. It is clearly seen in the assessment order that appellant has concealed receipts in one bank account from disclosing for income taxation. AO has clearly worked out the addition of Rs.17,75,004/-. There is no reasonable cause for concealing the bank account and turnover. Penalty levied on the above is confirmed.

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5.3 Similary, penalty for concealment levied on addition of Rs.3,29,000/- (Staff welfare, telephone expenses, travelling expenses, vehicle maintenance, etc.) for being personal in nature and having no supporting vouchers is also not reasonable in view of the explanation given.

5. When these para's were confronted to Id. Senior DR that there is no finding of fact recorded as to how the assessee has concealed the particulars of income, the Id. Senior DR could not explain factual position in regard to levy of penalty on these two items.

6. After hearing Id. Senior DR and going through the fact that the order of CIT(A) on both the items, on which penalty u/s.271(1)(c) is confirmed is totally non-speaking order, we set aside the order of CIT(A) and remand the matter back to the file of CIT(A) for fresh adjudication and for passing a speaking order after allowing reasonable opportunity of being heard to the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13th September, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 13th September, 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. |