

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' 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

आयकरअपीलसं./I.T.A.Nos.193 & 194/Chny/2021
(निर्धारणवर्ष / Assessment Years: 2004-05 & 2005-06)

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| M/s.Thirumala Green Power Enterprises Pvt. Ltd. 16, Cenotaph Road, Teynampet, Chennai-600 018. | Vs | The Assistant Commissioner of Income Tax, Company Circle-III(2) Chennai. |
| PAN: AABCT 3686K | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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| अपीलार्थीकीओरसे/ Appellant by | : | Mr.G.Baskar, Advocate |
| प्रत्यर्थीकीओरसे/Respondent by | : | Mr. Guru Bashyam, CIT DR |

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| सुनवाईकीतारीख/Date of hearing | : | 14.09.2022 |
| घोषणाकीतारीख /Date of Pronouncement | : | 14 .09.2022 |

आदेश / ORDER

PER G.MANJUNATHA, AM:

These two appeals filed by the assessee are directed against separate, but identical orders of the learned Principal Commissioner of Income Tax, Chennai-3, passed u/s.263 of the Income Tax Act, 1961, both dated 25.03.2021 and relevant to assessment years 2004-05 & 2005-06. Since, facts are identical and issues are common, for the sake of convenience, these appeals are heard together and are being disposed off, by this consolidated order.

2. At the outset, we find that there is a delay of 21 days in appeals filed by the assessee. During the course of hearing, learned AR for the assessee submitted that delay in filing of

appeals is mainly due to lockdown imposed by the Govt. on account of spread of Covid-19 infections and in view of Hon'ble Supreme Court suo motu Writ Petition No.3 of 2020, if the period of delay is covered within the period specified in the order of the Apex Court, then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

3. The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

4. Having heard both sides and considered reasons given by the learned AR, we find that the Hon'ble Supreme Court in suo motu Writ Petition No.3 of 2020, has extended limitation applicable to all proceedings in respect of courts and tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme Court extending limitation period applicable for all proceedings before Courts and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone

delay in filing appeals filed by the assessee and same are admitted for adjudication.

5. Brief facts of the case are that for the assessment year 2004-05 and 2005-06 assessments have been completed u/s.143(3) r.w.s 147 of the Income Tax Act, 1961. The assessee filed appeals before the learned CIT(A), who had passed appellate order dated 20.09.2017 dismissing appeal filed by the assessee. The assessee has filed further appeal before the Tribunal and the Tribunal vide its order in ITA No.625 & 626/Chny/2018 dated 09.03.2018 had restored issues to the file of the Assessing Officer for adjudication, after complying with directions as given in the remand order of the learned CIT(A) dated 22.02.2016. The Assessing Officer, in pursuant to directions of the Tribunal, has passed an order dated 28.12.2018 u/s.143(3) r.w.s 147 & 254 of the Income Tax Act, 1961 and observed that assessments already completed u/s.143(3) r.w.s 147 dated 31.03.2010 is void for both the assessment years.

6. The case has been subsequently, taken up for revision proceedings by the Principal CIT, Chennai-3, and show-cause

notice dated 09.02.2021 was issued and served on the assessee and requested to show cause as to why assessment order passed u/s.143(3) r.w.s 147 & 254 of the Income Tax Act, 1961, dated 28.12.2018 for both the assessment years should not be treated as erroneous and prejudicial to the interests of revenue. The Principal CIT had given opportunity to the assessee to file written submissions through e-mail ID on or before 17.02.2021 and further, if desire may appear in person before the undersigned on the above date. In response, the assessee vide letter dated 16.02.2021 filed detailed written submissions on the issue and more particularly, in para 7 of its written submissions requested the learned PCIT to give personal hearing through authorized representative on a day & time fixed. The Principal CIT passed order u/s.263 of the Act, for both the assessment years on 25.03.2021 on the basis of the written submissions filed by the assessee without giving personal hearing to the assessee on the ground that with Covid-19 pandemic is continuing unabated, I feel in the given extraordinary circumstances and also due to fact that proceedings would get time barred shortly, it is sufficient to address objections raised by the assessee in this order and

also to deal with the issue on merits and thus, passed order and set aside assessment order passed by the Assessing Officer for both the assessment years. Aggrieved by the learned Principal CIT order, the assessee is in appeal before us.

7. The learned counsel for the assessee submitted that even though the assessee has sought personal hearing before the PCIT, the PCIT has passed order u/s.263 of the Act, in violation of principles of natural justice. The learned A.R for the assessee referring to show-cause notice issued by the PCIT and reply furnished by the assessee and also order passed by the Principal CIT submitted that there is no dispute with regard to fact that the Principal CIT has directed the assessee to avail, if so, personal hearing before the undersigned and the assessee has availed personal hearing. However, by citing pandemic reasons, the PCIT has passed order without giving opportunity of hearing to the assessee. Therefore, issues may be set aside to the file of PCIT to give one more opportunity of hearing to the assessee.

8. The learned DR, on the other hand, supporting order of the learned PCIT submitted that there is no dispute that the PCIT had not given personal hearing to the assessee despite request from the assessee, however, order has been passed on merits, after considering written submissions filed by the assessee. Therefore, there is no grievance for the assessee and thus, there is no need to set aside the issue to the file of the PCIT.

9. Having heard both the parties and considered materials available on record, we find that although, there cannot be any fault on the part of the Principal CIT in not giving personal hearing to the assessee, because of Covid-19 Pandemic situation, but keeping in mind principles of natural justice, we deem it appropriate to set aside orders passed by the PCIT u/s.263 of the Act and restore issue to the file of the Principal CIT to give one more opportunity of hearing to the assessee. Hence, we set aside 263 order passed by the PCIT for both the assessment years and restore the issue to the file of the PCIT and direct the Principal CIT to provide reasonable

opportunity of hearing to the assessee and decide the issue in accordance with law.

10. In the result, appeals filed by the assessee for both the assessment years are treated as allowed for statistical purposes.

Order pronounced in the open court on 14th September, 2022

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President
चेन्नई/Chennai,

दिनांक/Dated 14th September, 2022

DS

Sd/-
(जी. मंजुनाथ)
(G. Manjunatha)
लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.