

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.: **967/CHNY/2020**

निर्धारण वर्ष/Assessment Year: 2011 - 12

M/s. Mechnotek Industries,
No.D-64, Developed Plot Estate,
Thuvakudy,
Trichy – 620 015.

The Income Tax Officer,
Ward -1(1),
Trichy.

PAN: AAIFM 3330M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 27.09.2022

घोषणा की तारीख/Date of Pronouncement

: 27.09.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-1, Trichy, in ITA No.290/2014-15/CIT(A)-1/TRY dated 05.11.2019. The assessment was framed by the Income Tax Officer, Ward IV(1), Trichy for the assessment year 2011-12 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 18.03.2014.

2. At the outset it is noticed that this appeal is barred by limitation by 340 days and the order of CIT(A) was received by assessee on 05.11.2019 and as against the same, it has filed appeal before Tribunal on 09.12.2020. Therefore there was a delay of 340 days. The Id.counsel for the assessee drew our attention to the affidavit filed by assessee, who was the managing partner of the assessee firm stating the reason that impugned order was received and was handed over to Shri N.Narasimha, Chartered Accountant but the chartered accountant could not file appeal within 60 days i.e., on or before 04.01.2020 thereafter till 25.03.2020. There is almost 80 days before the broke down of Covid-19 pandemic and 80 days delay happened due to mismanagement by the chartered accountant. The reasons states as under:-

“I state that the impugned order was received and handed over immediately to the office of Mr. N.Narasimhan, Chartered Accountant for further action and I state that the impugned order received in the office of the Chartered Accountant was misplaced by the audit assistant as well not informed to the Chartered Accountant. I state that during the course of the recovery proceedings initiated in December 2020, there was thorough scrutiny of income tax records and I state that as a consequence the non filing of the appeal was noticed. I state that after obtaining a copy from the Income Tax Department, the appeal was presented belatedly in the Registry of the Appellate Tribunal on 9.12.2020.

I state that the mistake committed in the office of the Chartered Accountant would constitute reasonable cause for condoning the delay in filing the captioned appeal.”

Rest of the period falls under the Covid-19 pandemic exemption and hence, he requested that the delay be condoned. When this was pointed out to Id. Senior DR, he objected for the condonation of delay that the reasons stated for the delay of 80 days is not convincing.

2.1 After hearing rival contentions and going through the reasons stated, we are of the view that for the first 80 days till 25.03.2020, the cause seems reasonable and thereafter Covid-19 pandemic started and the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. In term of the above, we condone the delay in filing of this appeal by assessee and admit the appeal for adjudication.

3. The only issue in this appeal of assessee is as regards to the order of CIT(A) deciding the appeal ex-parte in regard to sustaining the addition of Rs.76,88,493/- representing the difference between the closing stock of the previous year i.e., as on 31.03.2010 and the

opening stock of the current assessment year 2010-11 as on 01.04.2010.

4, The Id.counsel for the assessee drew our attention to the order of CIT(A) and stated that the CIT(A) fixed the appeal after remand report only once and this fact is noted by him in para 5, which reads as under:-

“5. As per this remand report, the AO has stated that the case was fixed for hearing on 30.04.2019 but assessee did not avail of opportunity and as no details have been furnished, the Assessing Officer has recommended that addition of Rs.76,88,493/- on account of unproved opening stock should be upheld.”

4.1 The Id.counsel, then drew our attention to the findings of CIT(A) in para 8 and stated that there is no adjudication by the CIT(A) by a speaking order. He referred to the following para 8:-

“8. Considering persistent non attendance this case is hence decided on merits on the available record. As regards addition for unproved opening stock of Rs.76,88,493/- the addition is upheld on this ground and the appeal of assessee is dismissed.”

4.2 The Id.counsel for the assessee stated that the difference between the closing stock of the previous year and opening stock of the previous year relating to assessment year under consideration needs examination and for this, he requested the matter can be restored to the file of the AO instead of CIT(A).

5. When this fact was brought to the notice of the Id. Senior DR, he only relied on the assessment order and the order of the CIT(A).

6. We, in the given facts, are of the view that the CIT(A)'s order is ex-parte and moreover non-speaking on this issue. Hence, we set aside the order of CIT(A) and that of the AO on this very issue and remand the matter back to the file of the AO for fresh adjudication after providing reasonable opportunity of being heard to the assessee.

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

Order pronounced in the open court on 27th September, 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 27th September, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त /CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF. |