

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI**  
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
**Before Shri V. Durga Rao, Judicial Member &**  
**Shri Manoj Kumar Aggarwal, Accountant Member**

आयकर अपील सं./I.T.A. No.949/Chny/2022  
निर्धारण वर्ष/Assessment Year: 2017-18

Shri Tajinder Singh Kataria,  
12/14, Muthuram Street, Mylapore,  
Chennai 600 004.  
**[PAN:ADFPT9937R]**

Vs. The Income Tax Officer,  
Non Corporate Ward 1(7),  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sridhar, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT  
सुनवाई की तारीख/ Date of hearing : 12.01.2023  
घोषणा की तारीख /Date of Pronouncement : 24.01.2023

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 14.09.2022 relevant to the assessment year 2017-18.

2. Brief facts of the case are that the assessee filed the return of income for the assessment year 2017-18 on 29.07.2017 admitting total income of ₹.2,65,790/-. The case was selected for limited scrutiny under CASS for the reason of large value of imports shown in the export Import

Data and non-business or presumptive business return was filed. Notice under section 143(2) of the Income Tax Act, 1961 ["Act" in short] was issued on 24.09.2018. Subsequently, notice under section 142(1) of the Act was also issued called for details. On verification of bank statement of ICICI Bank account, there was total credit of ₹.13,40,156/- and as per the Kotak Mahindra Bank, there was total credit of ₹.3,78,69,000/-. As per the statement of import, the transactions are having nature of business or professions and the assessee has not admitted any income from business or profession. Accordingly, the Assessing Officer issued show cause notice proposing income of the assessee @ 8% of the amount of ₹.3,92,09,156/- as unaccounted business income. However, the assessee has not filed any explanation. Thus, the Assessing Officer completed the assessment under section 143(3) of the Act dated 04.12.2019 by assessing total income of the assessee at ₹.31,36,732/- after making addition of ₹.28,70,942/-. On appeal, the Id. CIT(A) dismissed the appeal of the assessee and confirmed the addition in the absence of any written submissions, information or document before the Id. CIT(A) besides filing the appeal belatedly without assigning any reason for the delay.

3. On being aggrieved, the assessee is in appeal before the Tribunal.

The Id. Counsel for the assessee has submitted that the delay in filing the appeal before the Id. CIT(A) was neither wilful nor deliberate but due to circumstances beyond the control of the assessee. Moreover, the assessee misunderstood the provisions governing limitation and thus, the Id. counsel prayed for condonation of delay in filing the appeal before the Id. CIT(A). Since the assessee was out of the state due to medical treatment, he could not able to submit his explanation either before the Assessing Officer or before the Id. CIT(A). Hence, the Id. Counsel for the assessee prayed for an opportunity of being heard to the assessee to offer his explanation before the Id. CIT(A).

4. On the other hand, the Id. DR strongly supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Against the assessment order, the assessee preferred an appeal before the Id. CIT(A). The Id. CIT(A) has noted from Form 35 that the appeal filed by the assessee was delayed by 29 days in filing the appeal and since no reason for delay in filing of appeal has been given by the assessee, the Id. CIT(A) was of the opinion that the delay cannot be condoned and the appeal is liable to be dismissed *in limine* on this score itself. It is apparent

that the assessee was not aware of the delay in filing the appeal before the Id. CIT(A) since the assessee has been misunderstood the provisions governing limitation as per the petition filed before the Tribunal. Under these circumstances, we direct the assessee to file a condonation petition in the form of an affidavit before the Id. CIT(A) for condonation of delay in filing the appeal and the Id. CIT(A) is directed to consider the reasonable cause for the delay in filing the appeal. As prayed by the Id. Counsel for the assessee to afford an opportunity of being heard, in order to meet the ends of natural justice, we direct the Id. CIT(A) to give an opportunity to the assessee to furnish his explanation in support of documentary evidence and after considering the same, the Id. CIT(A) shall decide the issue afresh in accordance with law.

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

Order pronounced on 24<sup>th</sup> January, 2023 at Chennai.

Sd/-  
(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 24.01.2023

Vm/-

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.