

आयकर अपीलीय 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

आयकरअपीलसं./I.T.A.Nos.654 & 655/Chny/2022
(निर्धारणवर्ष / Assessment Years: 2009-10 & 2010-11)

Mr. Athur Subramanyam, No.9, Flat No.202, 2 nd floor, Chitra Avenue, Manju Block, Choolaimedu High Road, Chennai-600 094.	Vs	The ADIT, Centralized Processing Center, Bangalore.
PAN:ALMPS 3635A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. R.Venkata Raman, C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. P.Sajit Kumar, JCIT

सुनवाईकीतारीख/Date of hearing	:	30.03.2023
घोषणाकीतारीख /Date of Pronouncement	:	30.03.2023

आदेश / ORDER

PER MAHAVIR SINGH, VP:

These two appeals by the assessee are arising out of separate orders passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi vide appeal No. ITBA/NFAC/S/250/2022-23 / 1043862059(1) / 1043862105 (1) both dated 15.07.2022. The assessments were completed by the ADIT., CPC., Bengaluru, for the relevant assessment years 2009-10 & 2010-11 and issued intimation u/s.143(1) of the Income Tax Act, 1961 (hereinafter "the Act") vide orders dated 21.11.2010 & 07.01.2011 respectively. Since, the issue involved in these appeals is common, for the

sake of convenience, they were heard together and disposed off by this consolidated order.

2. The first common issue in these two appeals of the assessee is as regards to order of the CIT(A) in not condoning the delay in filing of appeal and dismissed the appeal *in limine* without admitting. For this, the assessee has raised ground no.1 which is common in both the years and relevant ground raised for 2009-10 reads as under:-

“The Ld.CIT(A), NFAC is not justified in not condoning delay in filing of appeal by the appellant in spite of the fact that delay was neither intentional nor due to negligence but for sufficient and reasonable cause beyond control of the appellant.”

3. We have heard rival contentions and gone through facts & circumstances of the case. We noted that the assessee filed its return of income electronically on 28.07.2010 for assessment year 2009-10 and 27.09.2010 for assessment year 2010-11, after claiming deduction u/s.80JJA of the Act. The assessee is an individual engaged in the business of collecting, processing and treating of bio-degradable waste. While processing return by the CPC., Bengaluru u/s.143(1) of the Act for both the years, disallowed claim of deduction u/s.80JJA of the Act and

consequently raised demand. Aggrieved, the assessee preferred appeal before the CIT(A).

4. The CIT(A) dismissed appeals for both the years as unadmitted. Aggrieved, now the assessee is in appeal before the Tribunal.

5. We noted that the assessee filed e-return for assessment year 2009-10 on 28.07.2010 and for assessment year 2010-11 on 27.09.2010, which was processed by the CPC., Bengaluru, u/s.143(3) vide intimation issued u/s.143(1) dated 21.11.2010 and 07.01.2011. The assessee filed appeal before the CIT(A) for both assessment years on 01.03.2021 and according to CIT(A), there is delay of 3722 days for assessment year 2009-10 and 3675 days for assessment year 2010-11. The assessee submitted that intimation for both the years were never received, because the assessee has given e-mail ID /address of one Accountant, Mr.Raghunathan, who was employee of the assessee and left service of the petitioner without updating anything on the pending assessments or demands. The demand came to the notice of the assessee only in January, 2021, assessee's tax

consultant, Mr.V.Naveen noticed from income-tax portal that there is demand outstanding against the assessee for assessment year 2009-10 at Rs.37,69,740/- and for the assessment year 2010-11 demand of Rs.33,25,430/-. Thereafter, the assessee gave another e-mail address and intimation u/s.143(1) was served only on 19.03.2020 and accordingly, appeals were filed only on 01.03.2021. Once, there is no intimation received by the assessee u/s.143(1) of the Act, and even now, the Id Sr.DR could not file any evidence of service of intimation on the given mail i.e., e-mail of Mr.Raghunath [catrIncoit@gmail.com] at page 3 of the paper book. The learned counsel for the assessee stated that even on 19.03.2020 only intimation copy of rectification order for these two assessment years were sent by the Assessing Officer. It is presumed like that. When these facts were confronted to Ld. Sr.DR, he fairly conceded that matter may be restored back to the file of the CIT(A), who will decide the issue on merits. In our view, the Revenue could not establish service of intimation u/s.143(1) on the assessee. Hence, we condone the delay and admit both the appeals filed by the assessee before the CIT(A) and direct him to decide the issue on merits.

However, we see that there is laxity on the part of the assessee. Therefore, we impose cost of Rs.10,000/- for each assessment year, thereby the assessee has to pay total cost of Rs.20,000/- to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras. Subject to the above condition that the assessee will pay cost of Rs.20,000/-, the matter is remitted back to the file of the CIT(A), who will decide the issue afresh, on merits in accordance with law.

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

Order pronounced in the open court on 30th March, 2023

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member
चेन्नई/Chennai,
दिनांक/Date: 30.03.2023
DS

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

आदेश की प्रतिलिपि अद्येषित/Copy to:

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