

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री मंजूनाथा .जी, लेखा सदस्य एवं
श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER
AND SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.3222 & 3223/Chny/2019
निर्धारण वर्ष /Assessment Year: 2012-13

M/s.Sri Sai Balaji Gas –
Cylinder Pvt. Ltd.,
No.30/21, Dev Apartment,
First Main Road,
Gandhi Nagar, Adyar,
Chennai-600 020.
[PAN: AANCS 7534 H]
(अपीलार्थी/**Appellant**)

v. The Asst. Commissioner-
of Income Tax (OSD),
Corporate Circle-6,
Chennai.

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Mr.I. Dinesh, Adv. &
Mr.P.M.Kathir, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr. AR.V.Sreenivasan,
Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 29.05.2023

घोषणा की तारीख /Date of Pronouncement

: 09.06.2023

आदेश / ORDER

PER MANJUNATHA. G, AM:

These two appeals filed by the assessee are directed against separate orders of the Commissioner of Income Tax (Appeals)-15, Chennai, both dated 30.08.2019, and pertains to assessment year 2012-13. Since, the facts are identical and issues are inter-connected, for the sake of convenience, these two appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has raised the following grounds of appeal in ITA No.3222/Chny/2019:

1. *The order of the CIT(A) is erroneous, opposed to law and facts and liable to be set aside insofar as the same is passed on flawed appreciation of facts.*
2. *The CIT(A) ought to have cancelled the order levying penalty as barred by limitation.*
 - 3.1 *The CIT(A) failed to see that the Addl. CIT has arbitrarily assumed jurisdiction to levy penalty u/s.271D and hence the same is illegal and liable to be quashed ab initio.*
 - 3.2 *The CIT(A) erred in upholding the penalty levied u/s 271D to the tune of Rs.57,18,500/-.*
 - 3.3 *The CIT(A) ought to have seen that the provisions of Section 269SS does not have any application to the facts of the present case and consequently no penalty u/s.271D can be levied.*
 - 3.4 *The CIT(A) should have appreciated the submissions of the Appellant that the business exigency of the Appellant Company in operating from the remote town requires only cash and hence was constrained to make payments in cash.*
 - 3.5 *In any event, the CIT(A) ought to have seen that the Director of the Appellant Company only made payments to his running account in the Company which cannot partake the nature of a loan and thus provisions of Section 269SS will not apply.*
4. *Any other grounds that may be raised at the time of hearing.*

3. The assessee has raised the following grounds of appeal in ITA No.3223/Chny/2019:

1. *The order of the CIT(A) is erroneous, opposed to law and facts and liable to be set aside insofar as the same is passed on a flawed appreciation of facts.*
2. *The CIT(A) ought to have cancelled the order levying penalty as barred by limitation.*
 - 3.1 *The CIT(A) failed to see that the Addl. CIT has arbitrarily assumed jurisdiction to levy penalty u/s 271 E and hence the same is illegal and liable to be quashed ab initio.*
 - 3.2 *The CIT(A) erred in upholding the penalty levied u/s.271 E to the tune of Rs.58,43,890/-.*
 - 3.3 *The CIT(A) ought to have seen that the provisions of Section 269T does not have any application to the facts of the present case and consequently no penalty u/s.271 E can be levied.*
 - 3.4 *The CIT(A) should have appreciated the submissions of the Appellant that the business exigency of the Appellant Company in operating from the remote town requires only cash and hence was constrained to repay in cash.*

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3.5 *In any event, the CIT(A) ought to have seen that the Director of the Appellant Company only made payments to his running account in the Company which cannot partake the nature of a loan and thus provisions of Section 269T will not apply.*

4. *Any other grounds that may be raised at the time hearing.*

4. The brief facts of the case are that the assessee company is engaged in the business of manufacturing of LPG cylinders, filed its return of income for AY 2012-13 on 30.09.2012 declaring total loss of Rs.35,59,151/-. The case was selected for scrutiny and assessment has been completed u/s.143(3) of the Income Tax Act, 1961 (in short "the Act") on 26.03.2015 and determined total loss of Rs.23,90,611/-. During the course of assessment proceedings, the AO noticed that the assessee company has accepted loans from Mr.M.Muruganandam, Managing Director of the company in contravention of sec.269SS of the Act. The AO further noted that the assessee had also re-paid loans in cash to Mr.M.Muruganandam in contravention of provisions of Sec.269TT of the Act. Therefore, a reference was made to the Addl.CIT, Corporate Range-6, Chennai, for initiation of penalty proceedings u/s.271D & 271E of the Act, vide letter dated 24.07.2018. The Addl.CIT, Corporate Range-6, Chennai, initiated penalty proceedings u/s.271D & 271E of the Act, on 03.08.2018 and called upon the assessee to explain 'as to why' penalty shall not be levied for contravention of provisions of Sec.269SS & 269TT of the Act. In response to the notice, Mr.K.Subramaniam, CA, appeared for hearing on 04.09.2018, and contended that the assessee has accepted cash loans from Mr.M.Muruganandam, Managing Director of the company for urgent commitments of cash such as payments for purchases, labour, freight,

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administrative expenses, and deposits to bank to reduce credit limits and honour cheques given for business. He further contended that cash receipts and payments to Mr.M.Muruganandam is nothing but current account of Director in the ordinary course of business, and the same cannot be considered as loans & advances, and invoke provisions of Sec.271D & 271E of the Act.

5. The AO, however, was not convinced with the explanation of the assessee and according to the AO, the assessee could not substantiate its claim that it has received cash from Director for urgent requirement to incur various expenditure and also deposit cash into bank account to reduce credit limit or to honour cheques, because, the assessee is well served by banking facilities in a place where it is having its place of business. Further, the claim of the assessee that it has received cash from Director for urgent requirement is devoid of merits, because, if you see the ledger account of loans & advances from Director, it is noticed that the assessee has received huge amount of cash on various dates and also re-paid loans in cash to Mr.M.Muruganandam, in huge amount without there being any narration to explain why said amount has been received or re-paid in cash. Therefore, rejected arguments of the assessee and levied penalty u/s.271D of the Act, for contravention of provisions of s.269SS of the Act, for Rs.57,18,500/-, and also levied penalty of Rs.58,43,890/- u/s.271E of the Act, for contravention of provisions of Sec.269TT of the Act.

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6. Being aggrieved by the penalty order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed detailed written submissions on the issue which has been re-produced in Para No.5 of CIT(A) order. The sum and substances of the arguments of the assessee before the Ld.CIT(A) are that loans received from Mr.M.Muruganandam, Managing Director of the assessee's company, cannot be treated as loans & advances u/s.269SS & 269TT of the Act, because, the cash transactions between the assessee and its Managing Director, is purely a normal current account transactions in ordinary course of business for urgent requirement of cash to maintain day to day business affairs of the company. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of certain judicial precedents, including the decision of the Hon'ble Madras High Court in the case of CIT v. Idhayam Publications Ltd., reported in 285 ITR 221 (Mad) opined that arguments of the assessee that transactions between the assessee's company and its director, does not attract character of the loan, is not acceptable as the assessee's company has declared said transactions as loans outstanding in the balance sheet at the end of the year. The Ld.CIT(A) had also rejected arguments of the assessee that said transactions does not attract provisions of Sec.269SS & 269TT of the Act, because, from the ledger extract furnished by the assessee, it is clearly evident that the assessee has received loans & advances in cash and has also re-paid loans & advances in cash in contravention of provisions of

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Sec.269SS & 269TT of the Act, which warrants levy of penalty u/s.271D & 271E of the Act. The Ld.CIT(A) discussed the issue at length in light of nature of the business of the assessee and its place of business and observed that the assessee is well served by commercial bank in their place of business, and thus, the arguments of the assessee that it has received cash loans from Managing Director for urgent requirement of business is devoid of merits. Further, even though, the assessee is having banking facility why it could not avail the facility for transfer of funds between assessee company and Managing Director, was not explained. Therefore, rejected arguments of the assessee and by following the decision of the Hon'ble Madras High Court in the case of CIT v. Idhayam Publications Ltd., and also in the case of Vasan Healthcare (P) Ltd. v. ACIT reported in [2019] 103 taxmann.com 26 (Madras) sustained penalty levied by the AO u/s.271D & 271E of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

7. The Ld.Counsel for the assessee submitted that the Ld.CIT(A) is erred in law and fact in upholding the order levying penalty, even though, order passed by the AO is barred by limitation. The Ld.Counsel for the assessee referring to notice issued u/s.274 r.w.s.271D & 271E of the Act, dated 04.03.2019 and also order imposing penalty u/s.271D & 271E of the Act, dated 26.02.2019, uploaded in ITBA submitted that the AO passed penalty order on 26.02.2019, whereas, issued notice for levying penalty on 04.03.2019, which is incorrect. The Ld.Counsel for the assessee, further

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submitted that the order passed by the AO is barred by limitation in terms of provisions of Sec.275(1)(c) of the Act, where it has been clearly stated that the order imposing penalty cannot be passed after expiry of financial year in which the proceedings, in the course of which action for imposing penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. In this case, the ACIT, Corporate Circle-6(2), Chennai, sent a proposal for initiation of penalty on 24.07.2018 and if you consider six months from the end of the month, in which, proceedings are initiated, the AO ought to have passed order u/s.271D & 271E of the Act on or before 31.01.2019. But, in the present case, the AO passed order u/s.271D & 271E of the Act, on 26.02.2019 which is clearly barred by limitation in terms of provisions of Sec.275(1)(c) of the Act, and thus, same needs to be quashed. In this regard, he relied upon the decision of the Hon'ble Delhi High Court in the case of PCIT v. Mahesh Wood Products (P) Ltd., reported in [2017] 394 ITR 312(Delhi) and also in the case of PCIT v. Rishikesh Buildcon (P) Ltd., reported in [2023] 451 ITR 108 (Delhi).

8. The Ld.Counsel for the assessee on merits of the case submitted that the Ld.CIT(A) erred in sustaining penalty levied by the AO u/s.271D & 271E of the Act, even though, the assessee has explained before the authorities that transactions between the assessee company and its Managing Director cannot be treated as loans & advances in terms of provisions of Sec.269SS & 269TT of the Act. The Ld.Counsel for the assessee further submitted that

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the assessee is in the business of manufacturing of LPG cylinders is having manufacturing facility located in Cheyyar Town, Tiruvannamalai District, which is not well connected by banking facilities. Further, the assessee company had received cash from Managing Director for urgent requirement like payment of salaries, purchase of raw materials, transportation charges and cash deposit into bank account to reduce over draft limit or to clear cheques issued in the course of business. Unless the assessee received cash, the business of the assessee would hamper. Therefore, the assessee has received cash for urgent requirement of business needs and also repaid cash received from the Managing Director as and when the cash available with the assessee. Therefore, the transactions between the assessee company and its Managing Director, cannot be treated as loans & advances u/s.269SS & 269TT of the Act. In this regard, he relied upon the decision of the Hon'ble Madras High Court in the case of CIT v. Idhayam Publications Ltd., (supra). The Ld.Counsel for the assessee had also distinguished the decision of the Hon'ble Madras High Court in the case of Vasan Healthcare (P) Ltd. v. ACIT, and argued that in Vasan Healthcare (P) Ltd. v. ACIT, the Director has received cash loans from financials and had given loans to company and under those facts, the Hon'ble Madras High Court came to conclusion that there is a clear violation of provisions of Sec.269SS of the Act. In the present case, it is not a case of loans & advances borrowed from third party, but, it is a case of current account transactions between the assessee and Managing Director, and thus, the

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case of the assessee squarely covered by the decision of the Hon'ble Madras High Court in the case of CIT v. Idhayam Publications Ltd. (supra). Therefore, he submitted that penalty levied by the AO u/s.271D & 271E of the Act, should be deleted.

9. The Ld.DR, Mr. AR.V.Sreenivasan, Addl.CIT, referring to notice generated in ITBA portal on 04.03.2019 and the order passed by the AO imposing penalty u/s.271D & 271E of the Act, dated 26.02.2019 submitted that there is no merit in the arguments of the assessee that order passed by the AO imposing penalty is void ab initio, because, the notice referred to by the Ld.Counsel for the assessee is system generated notice in the ITBA portal when the orders has been uploaded in the portal. However, as per records, the Addl.CIT, Corporate Range-6, Chennai, issued notice u/s.271D & 271E of the Act, on 03.08.2018, and passed the order on 26.02.2019 itself. Therefore, the subsequent notice generated in ITBA portal is system generated notice, which cannot be considered as first notice issued for initiation of penalty proceedings. The Ld.DR further submitted that the order passed by the AO imposing penalty u/s.271D & 271E of the Act, are not time barred, because, the Ld.Counsel for the assessee is referring to the letter dated 24.07.2018 received from the ACIT, Corporate Circle-6(2), Chennai, for proposal for initiation of penalty proceedings. However, penalty proceedings have been initiated by the Addl.CIT, Corporate Range-6, Chennai, by issuance of notice u/s.271D & 271E of the Act, on 03.08.2018. If you consider the notice date, order

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passed by the AO imposing penalty on 26.02.2019 is within the time prescribed u/s.275(1)(c) of the Act. The Ld.DR further submitted that on merits, the Ld.CIT(A) brought clear facts to the effect that the assessee has clearly violated the provisions of Sec.269SS & 269TT of the Act, which warrants penalty u/s.271D & 271E of the Act. Therefore, he submitted that the order of the Ld.CIT(A) should be upheld.

10. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The first and foremost objection of the Ld.Counsel for the assessee in light of notice u/s.274 r.w.s.271D & 271E of the Act, dated 04.03.2019 that the notice has been issued after the date of the order imposing penalty. We find that the notice referred to by the Ld.Counsel for the assessee is only system generated notice while uploading the order imposing penalty u/s.271D & 271E of the Act, in ITBA portal as required under the law, which is clearly evident from the records that the ITBA portal has generated notice u/s.274 r.w.s.271D & 271E of the Act, on 04.03.2019 and also order imposing penalty u/s.271D & 271E of the Act, also dated 04.03.2019. From the above, it is clear that it is only a system generated notice when the orders have been uploaded in ITBA portal only. On the other hand, from the orders imposing penalty u/s.271D & 271E of the Act, it is very clear that the AO initiated penalty proceedings by issuance of notice u/s.271D & 271E of the Act, on 03.08.2018 and passed order imposing penalty on 26.02.2019.

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Therefore, we are of the considered view that there is no merit in objection raised by the assessee, and thus, the same is rejected.

11. In so far as limitation issue raised by the Ld.Counsel for the assessee in light of provisions of Sec.275(1)(c) of the Act, we find that as per said provision, in a case, where the relevant assessment order is not subject matter of the appellate proceedings or revision proceedings, then, the order imposing penalty shall not be passed after expiry of the Financial Year, in which, the proceedings in the course of which action for the imposition of penalty has been initiated or completed or six months from the end of the month, in which, action for imposition of penalty is initiated whichever period expires later. In the present case, the second part of Clause (c) to s.275(1) of the Act, is applicable, because, limitation as provided u/s.275(1)(c) of the Act, needs to be examined on the basis, notice issued for initiation of penalty proceedings u/s.271D & 271E of the Act. In the present case, the AO sent a proposal for initiation of penalty proceedings vide letter dated 24.07.2018. The Addl.CIT, Corporate Range-6, Chennai, initiated penalty proceedings by issuance of notice u/s.274 r.w.s.271D & 271E of the Act, dated 03.08.2018. The Ld.Counsel for the assessee's contention is that for the purpose of limitation the letter dated 24.07.2018 received from the ACIT, Corporate Circle-6(2), Chennai, needs to be considered and if you consider said date, then, the order passed by the AO imposing penalty on 26.02.2019 is barred by limitation, because, which is beyond six months from the end of the month in which action for imposition

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of penalty is initiated. If you consider the date of notice issued by the AO on 03.08.2018, order passed by the AO imposing penalty u/s.271D & 271E of the Act, on 26.02.2019 is within six months from the end of the month, in which, the action for imposition of penalty is initiated.

12. We have gone through the arguments of the Ld.Counsel for the assessee in light of provisions of Sec.271D & 271E of the Act, and in light of limitation prescribed u/s.275(1)(c) of the Act. After careful consideration, we are of the considered view that the action for imposition of penalty proceedings is initiated, when the AO imposing penalty is issued notice u/s.274 r.w.s.271D & 271E of the Act, which is very clear from the provisions of Sec.275(1)(c) of the Act, that no order imposing penalty under this chapter shall be made, unless the assessee has been heard or has been given a reasonable opportunity of being heard. Therefore, we are of the considered view that there is no merits in the arguments of the Ld.Counsel for the assessee that the limitation as provide u/s.275(1)(c) of the Act, commence the moment, the AO sent a proposal to the Joint / Addl. CIT for imposition of penalty. We further noted that the AO who is competent to initiate and levy penalty u/s.271D & 271E of the Act, is the Joint / Addl. CIT is concerned range, but not the AO. Therefore, the date of proposal sent by the AO to the Joint / Addl. CIT for initiation of penalty proceedings is not relevant, because, the satisfaction of the AO who is competent to initiate penalty proceedings u/s.271D & 271E of the Act, is necessary and important to decide whether penalty proceedings can be

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initiated or not. Therefore, the actual date that needs to be reckoned for the purpose of limitation as prescribed u/s.275(1)(c) of the Act, is the date of notice issued u/s.274 r.w.s.271D & 271E of the Act, but not the date of proposal sent by the AO. In this case, if you consider the date of notice issued u/s.274 r.w.s.271D & 271E of the Act, i.e. 03.08.2018, the limitation prescribed u/s.275(1)(c) of the Act runs up to 28.02.2019 since the AO passed order imposing penalty u/s.271D & 271E of the Act, on 20.06.2019. In our considered view, the order passed by the AO is well within time limit prescribed Sec.275(1)(c) of the Act, and thus, we reject the arguments taken by the Ld.Counsel for the assessee on limitation. The assessee has relied upon the decision of the Hon'ble Delhi High Court in the case of PCIT v. Rishikesh Buildcon (P) Ltd., reported in [2023] 451 ITR 108 (Delhi) and argued that the Hon'ble Delhi High Court held that the limitation prescribed u/s.275(1)(c) of the Act, commenced from the date the AO sent a proposal to the Joint / Addl. CIT for penalty proceedings, but not from the date the Officer imposing penalty notice issued u/s.274 r.w.s.271D & 271E of the Act. We find that the Hon'ble Delhi High Court had considered the issue in light of the facts where there is a huge gap of nearly five years from the date, the AO sent a proposal to the Officer imposing penalty and the notice issued by the Officer imposing penalty and under those facts, the Hon'ble Delhi High Court came to the conclusion that the limitation prescribed u/s.275(1)(c) of the Act, runs from the date the AO sent proposal for initiation of penalty proceedings. In the present case, the AO sent a

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proposal for initiation of penalty proceedings on 24.07.2018 and the AO issued notice u/s.271D & 271E of the Act, on 03.08.2018, within less than a month. Therefore, we are of the considered view that the ratio laid down by the Hon'ble Delhi High Court in the above case, is not applicable to the facts of the present case. The assessee had also relied upon the decision of the Hon'ble Delhi High Court in the case of PCIT v. Mahesh Wood Products (P) Ltd., reported in [2017] 394 ITR 312 (Delhi). We find that the facts of the case before the Hon'ble Delhi High Court are entirely different to the facts of the present case, and thus, we are of the considered view that the case laws relied upon by the Ld.Counsel for the assessee is not applicable to the facts of the present case.

13. In so far as the merits of the issue is concerned, the AO imposed penalty u/s.271D & 271E of the Act, for contravention of provisions of Sec.269SS & 269TT of the Act, for accepting and re-paid loans & advances in cash. The assessee has accepted loans & advances from its Managing Director in cash in contravention of provisions of Sec.269SS & repaid in contravention of Sec.269TT of the Act. The arguments of the assessee that amount received and paid to its Managing Director is not loans & advances within the meaning of Sec.269SS & 269TT of the Act, is unsubstantiated, because, the assessee claims to have received cash from its Managing Director in the ordinary course of business for urgent requirement of day to day running of business, including purchase of raw materials, payment of salaries, transportation charges, and to deposit to bank to clear cheques

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issued in the course of business. But, on perusal of ledger extract of Mr.M.Muruganandam, in the books of accounts of the assessee, it is very clear that the assessee has received cash from its Managing Director on various dates in huge amounts and also repaid in cash in huge amount without there being any explanation 'as to why' loans & advances have been received in cash. We further noted that the claim of the assessee that it has received cash for urgent requirement for making payment for various expenditure, is also not correct, because, the assessee received a sum of Rs.18 lakhs from Mr.M.Muruganandam on 14.09.2011, even though, the assessee had more than Rs.11 lakhs cash in hand as on that date in the books of accounts. From the above, it is very clear that the justification given by the assessee for receiving loans & advances in cash from its Managing Director is unsubstantiated. Further, the assessee had also repaid loans & advances in cash in huge amount on various dates and could not explain why loans have been repaid in cash. Therefore, we are of the considered view that the assessee could not explain the reasonable cause for accepting loans & advances in cash in contravention of provisions of Sec.269SS & 269TT of the Act.

14. In so far as arguments of the assessee that its place of business situated where there is no adequate banking facilities, we find that the Ld.CIT(A) has recorded categorical findings in their appellate order that the assessee factory is located in Cheyyar Town, Tiruvannamalai District and Cheyyar is a taluk headquarter and a town with around 30 bank branches.

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The assessee is maintaining a current account with Canara Bank and there is a Canara bank at Cheyyar Town. From the above, it is clear that the arguments of the assessee that there is no adequate banking facilities, in a place, where its business is carried on, is unsubstantiated. Therefore, we are of the considered view that there is a clear violation of provisions of Sec.269SS of the Act, in accepting loans & advances in cash from its Managing Director and also there is a clear violation of provisions of Sec.269TT of the Act, in repayment of loans & advances in cash to its Managing Director and which warrants levy of penalty u/s.271D & 271E of the Act. The Ld.CIT(A) after considering relevant facts has rightly upheld penalty levied u/s.271D & 271E of the Act, and thus, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeals filed by the assessee.

15. In the result, appeals filed by the assessee are dismissed.

Order pronounced on the 09th day of June, 2023, in Chennai.

Sd/-

(मनोमोहन दास)

(MANOMOHAN DAS)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 09th June, 2023.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

3. आयकर आयुक्त/CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF