

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **599/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2009-10

Crystal Residency India Pvt Ltd., Deputy Commissioner of
No. 51/22, Model School Road, v. Income Tax,
Thousand Lights, Corporate Circle -1(2),
Chennai – 600 006. Chennai - 34.

[PAN: AABCC-7530-M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: None

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 26.06.2023

घोषणा की तारीख/Date of Pronouncement

: 26.06.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 13.12.2022 and pertains to assessment year 2009-10.

2. At the outset, learned AR for the assessee submitted that the appeal filed by the assessee is time barred by 88 days. The AR submitted that the assessee could not file appeal within the

time allowed under the Act, due to circumstances beyond the control of the assessee, therefore, delay may be condoned in the interest of advancement of substantial justice.

3. The learned DR, on the other hand, strongly opposing the submissions of the AR stated that the reasons given by the assessee do not come within the ambit of reasonable and bonafide reasons, which can be considered for condonation of delay and hence, appeal filed by the assessee may be dismissed as not maintainable.

4. Having heard both sides, we are of the considered view that reasons given by the assessee for not filing the appeal within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of appeal is condoned and appeal filed by the assessee are admitted for adjudication.

5. The brief facts of the case are that, the assessee company filed its return of income for the assessment year 2009-10 on 17.03.2010, declaring total income of Rs. 3,84,55,570/-. The assessment has been completed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 23.12.2011 and determined total income of Rs. 7,24,30,460/- for making

additions towards long term capital gains and income from real estate activities. Thereafter, the Assessing Officer initiated penalty proceedings u/s. 271(1)(c) of the Act and called upon the assessee to explain as to why penalty shall not be levied for concealment of income. The Assessing Officer, after considering relevant submissions of the assessee levied penalty of Rs. 1,55,61,763/-, which is 100% on tax sought to be evaded for concealment of income u/s. 271(1)(c) of the Act. The assessee carried the matter in appeal before the first appellate authority, but neither appeared nor filed any details, which is evident from Para 7 of Id. CIT(A) order, where although the Id. CIT(A) gave four dates for hearing, but the appellant did not appear and filed necessary details. Therefore, the Id. CIT(A) disposed off appeal filed by the assessee and sustained penalty levied u/s. 271(1)(c) of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

6. None appeared for the assessee. We have heard the Id. DR and perused the relevant material available on record. Although, the Id. CIT(A) disposed off appeal filed by the assessee *ex parte* for non-prosecution, but said appeal has been disposed off on technical ground without discussing the issue on merits. No doubt, when the appellants did not appear and prosecute its

appeal, then the appellate authorities are left with no choice but to dispose off the appeals, but said appeals should be disposed off on merits on the basis of materials available on record. In this case, the CIT(A) disposed off appeal filed by the assessee on technical ground for non-prosecution, but did not discussed the issue on merits. Therefore, we are of the considered view that the issue needs to go back to the file of the CIT(A) for fresh consideration. Thus, we set aside the order of the CIT(A) and restore the issue back to the file of the CIT(A) and direct the CIT(A) to reconsider the issue after providing reasonable opportunity of hearing to the assessee.

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

Order pronounced in the Open Court on 26th June, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 26th June, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF