

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri Manjunatha, G. Accountant Member

आयकर अपील सं./I.T.A. No.649/Chny/2023
निर्धारण वर्ष/Assessment Year: 2011-12

Kaeripattinam Viswanathan Pownraj,
No. 387/1, M.S. Nagar, Mittahali,
Kaveripattinam Post, Krishnagiri Tk &
Dt., Tamil Nadu 635 112.

Vs. The Assistant Commissioner of
Income Tax, Circle 1,
Hosur.

[PAN:AHGPP9260N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri T.S. Lakshmi Venkataraman, FCA
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 / 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 01.03.2023 relevant to the assessment year 2011-12 passed under section 271(1)(c) of the Income Tax Act, 1961 ["Act" in short].

2. Brief facts of the case are that as per the information available on record, the assessee has made cash deposits of ₹.1,15,14,970/- during

the financial year 2010-11 relevant to the assessment year 2011-12 in the bank account held with various banks. On verification of the records, the Assessing Officer noted that the assessee has not filed his return of income. Since the Assessing Officer believed that the income chargeable to tax amounting to ₹.1,15,14,970/- has escaped assessment, notice under section 148 of the Act dated 21.03.2018 was issued requiring the assessee to file the return of income. In response to the notice, the assessee filed his return of income for the assessment year 2011-12 on 11.12.2018 declaring total income of ₹.5,57,920/-. After following due procedure, the Assessing Officer has completed the assessment under section 143(3) r.w.s. 147 of the Act dated 18.12.2018 by accepting the income returned by the assessee.

3. Subsequently, the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act by issuing notice under section 274 r.w.s. 271(1)(c) of the Act dated 06.12.2018. After considering the submissions of the assessee, the Assessing Officer levied penalty of ₹.46,952/- under section 271(1)(c) of the Act on the ground that the assessee has failed to file the return of income before the time limit prescribed in section 153(1) of the Act. On appeal, the Id. CIT(A) dismissed the appeal since the assessee has not responded to the

notices issued by the Id. CIT(A).

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the income returned by the assessee in his return of income has been accepted by the Assessing Officer vide his order under section 143(3) r.w.s. 147 of the Act. When there was no motive on the part of the assessee for the belated filing of the return, penalty proceedings cannot be initiated. In the absence of "*mens rea*", the penalty levied needs to be cancelled. It was further submission that the Id. CIT(A) has not adjudicated the issue on merits.

5. On the other hand, the Id. DR supported the order passed by the Id. CIT(A).

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Against the penalty levied under section 271(1)(c) of the Act, the assessee filed an appeal before the Id. CIT(A). However, the Id. CIT(A) upheld the penalty levied by the Assessing Officer and dismissed the appeal of the assessee in the absence of any reply/submissions in response to various notices issued by the Id. CIT(A). We have perused the appellate order and find

that the Id. CIT(A) has not adjudicated the levy of penalty under section 271(1)(c) of the Act when there was no motive on the part of the assessee for the belated filing of the return. Accordingly, we set aside the appellate order and remit the matter back to the file of the Id. CIT(A) to adjudicate the issue afresh on merits in accordance with law by affording an 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 26th June, 2023 at Chennai.

Sd/-
(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 26.06.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.