

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 Nos.: **917, 918 & 919/Chny/2023**
निर्धारण वर्ष / Assessment Years: 2009-10, 2010-11 & 2011-12

M/s. Bhandari Foils and Tubes Ltd., Deputy Commissioner of
27/B, Mookar Nallamuthu Street, v. Income Tax,
Parrys, Chennai – 600 001. Corporate Circle 1(2),
[PAN:AAACB-3096-L] Chennai – 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 17.10.2023

घोषणा की तारीख/Date of Pronouncement

: 17.10.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

These three appeals filed by the assessee are directed against separate, but identical order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, all dated 26.06.2023, 27.06.2023 & 26.06.2023 and pertains to assessment years 2009-10 to 2011-12, respectively. Since, facts are identical and issues are common, for the sake of convenience, these

appeals are heard together and are being disposed off, by this consolidated order.

2. The brief facts of the case are that, the appellant company had filed its return of income for assessment years 2009-10 to 2011-12 u/s. 139(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The assessment has been completed u/s. 144 r.w.s. 147 of the Act on 29.03.2016, and determined total income of Rs. 7,55,62,695/- for assessment year 2009-10, Rs. 9,89,64,678/- for assessment year 2010-11 & Rs. 7,20,29,912/- for assessment year 2011-12. The appellant filed appeals against the order of the assessment before the Id. CIT(A) and said appeals has been filed with a delay of 6 days for assessment year 2009-10, 7 days for assessment year 2010-11 & 8 days for assessment year 2011-12, as noticed by the Id. CIT(A) in Para 2 of their orders. According to the Id. CIT(A), the appellant did not specify the delay in filing of appeals in Form no. 35 filed for all assessment years and also not filed any petition for condonation of delay. Therefore, the Id. CIT(A) dismissed appeals filed by the assessee for all three assessment years at admission level and rejected appeals in absence of

condonation of delay. However, decided the issue involved in appeals on merits and sustained additions made by the Assessing Officer. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

3. The Ld. Counsel for the assessee, Shri. D. Anand, Advocate, submitted that the assessment order passed by the Assessing Officer is ex-parte. The Id. CIT(A) also passed ex-parte appellate order and dismissed appeals filed by the assessee without condoning delay in filing of appeals. But, the Id. CIT(A) decided the issue on merits contrary to the law. Therefore, in the interest of justice, the appeals may be set aside to the file of the Assessing Officer to give one more opportunity of hearing to the assessee.

4. The Id. Sr.AR. Shri. AR V Sreenivasan, Addl. CIT, on the other hand supporting the order of the Id. CIT(A) submitted that the assessee is a habitually non-cooperator to the proceedings, which is evident from the exparte assessment order passed by the Assessing Officer. The non-cooperation from the assessee is constituted even before the Id. CIT(A), which is evident from the order passed by the Id. CIT(A). The

assessee could not adduce proper reasons for non-appearance. Therefore, he submitted that the appeals should not be set aside to the file of the Assessing Officer/CIT(A).

5. Per contra, the Ld. Counsel for the assessee submitted that, there is a mistake from the assessee side for not appearing before the Assessing Officer and CIT(A). However, the fact remains that the appeals of the assessee has been decided unheard contrary to principle of natural justice. Therefore, the appeals may be set aside within a nominal cost on the assessee for not responding to the hearings before the Id. CIT(A).

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, there is a small delay of 6 days to 8 days in appeals filed by the assessee for three assessment years. The assessee neither specified the delay in Form no. 35 filed for relevant assessment years nor filed any petition for condonation of delay in filing of the appeals explaining reasons. Therefore, the Id. CIT(A) has dismissed appeals filed by the assessee unadmitted in absence of petition for

condonation of delay. No doubt, when the litigant are not persuading/ prosecuting their appeals with utmost honesty, then the appellate authority left with no option, but to decide the appeals on merits. But, in the present case, the CIT(A) although dismissed appeals filed by the assessee unadmitted, but went on to decide the issue involved in appeals on merits, contrary to settled position of law. It is an admitted fact, once the appeals are not admitted then there is no question of deciding those appeals and issues therein on merits. However, the Id. CIT(A) has decided the issues on merits. Further, the appeals of the assessee has been dismissed on technical grounds, without any proper petition from the assessee. Further, the delay in all the three appeals is very small. Therefore, considering the fact that the assessment order passed by the Assessing Officer is ex-parte and also the appeals of the assessee has been dismissed unheard, we are of the considered view that the issues needs to go back to the file of the Assessing Officer. Thus, we set aside the order passed by the CIT(A) for all three assessment years and restore the issues back to the file of the Assessing Officer for fresh adjudication. The Assessing Officer is also directed to reconsider the issue denovo in accordance with law, after

providing a reasonable opportunity of hearing to the assessee. Needless to say, the assessee shall appear before the Assessing Officer as and when the case is called for hearing and also file necessary evidences without seeking any adjournments. We further make it clear that, for default committed by the assessee for not appearing before the lower authorities, the assessee needs to pay nominal cost for such default. Therefore, we impose a nominal cost of Rs. 5,000/- for each assessment year and direct the assessee to deposit the amount of cost imposed to the State Legal Aid Authority, The Hon'ble High Court of Madras and produce necessary proof before the Assessing Officer.

7. In the result, appeals filed by the assessee for assessment years 2009-10 to 2011-12 are allowed for statistical purposes.

Order pronounced in the court on 17th October, 2023 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated: 17th October, 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

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member