

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री मंजूनाथा .जी, माननीय 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.618/Chny/2023
निर्धारण वर्ष /Assessment Year: 2016-17

M/s.Sivamani Wines,
1212, Nallathur Road,
Nedungadu-609 603.
Puducherry.

v.

The Income Tax Officer,
Ward-1,
Nagapattinam.

[PAN: ABQFS 9894 M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

:

Shri Sashank Srivatsan. S, FCA

प्रत्यर्थी की ओर से /Respondent by

:

Shri AR.V.Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

:

18.10.2023

घोषणा की तारीख /Date of
Pronouncement

:

20.10.2023

आदेश / ORDER

PER MANJUNATHA.G, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi, dated 16.03.2023, and pertains to assessment year 2016-17.

2. The brief facts of the case are that the assessee firm is a retail trader in IMFL and filed its return of income for AY 2016-17 on 22.02.2017

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admitting total income of Rs.5,30,820/-. The case was selected for scrutiny and the assessment has been completed u/s.143(3) of the Income Tax Act, 1961 (in short "the Act") on 24.12.2018, and determined total income of Rs.1,04,97,317/- by making various additions including additions towards disallowance of expenditure incurred in cash u/s.40A(3) of the Act, additions towards unproved sundry creditors and additions towards difference between purchases as per books of accounts and purchases recorded in the ITS Database. The assessee carried the matter in appeal before the First Appellate Authority, and has filed the appeal on 28.02.2019 with a delay of 35 days. The assessee has filed petition for condonation of delay and explained the reasons for delay in filing of the appeal. The Ld.CIT(A) dismissed the appeal filed by the assessee **in limine** for non-compliance of provisions of Sec.249(3) of the Act, on the ground that the reasons given by the assessee for delay in filing of the appeal is not sufficient and **bona fide**. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

3. The Ld.AR for the assessee, Shri Sashank Srivatsan. S, FCA, submitted that the Ld.CIT(A) passed **ex parte** order and dismissed the appeal filed by the assessee **in limine** on technical grounds for delay in filing of the appeal. He further submitted that under similar circumstances, the ITAT Chennai Bench for earlier assessment year, has set aside the appeal to the Ld.CIT(A) for fresh adjudication. Therefore, requested to set

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aside the issue to the file of the Ld.CIT(A) to give reasonable opportunity of hearing to the assessee to explain its case.

4. The Ld.DR, Shri AR.V.Sreenivasan, Addl.CIT, supporting the order of the Ld.CIT(A), submitted that the assessee is a habitual offender which is evident from the fact that even for earlier assessment year, the Ld.CIT(A) dismissed appeal filed by the assessee for non-prosecution. Further, for the impugned assessment year, although, the Ld.CIT(A) has given sufficient opportunities, the assessee failed to appear before the Ld.CIT(A) and file necessary details which is evident from Para No.4 of the order of the Ld.CIT(A). Therefore, there is no reason to give one more opportunity of hearing to the assessee, and thus, the order of the Ld.CIT(A) should be upheld.

5. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. Admittedly, the Ld.CIT(A) dismissed the appeal filed by the assessee ***in limine*** for delay in filing of the appeal. According to the Ld.CIT(A), the assessee could not explain the reasons for 35 days delay in filing of the appeal and reasons given by the assessee does not come under reasonable cause for condonation of delay. It was the explanation of the assessee that the appeal could not be filed due to illness of both partners, and further, the assessee does not get any undue benefit by filing appeal with delay. We find that although, the Ld.CIT(A) dismissed the appeal filed by the assessee

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in limine without condoning the delay in filing of the appeal, but the appeal has been dismissed on technical ground without deciding the issues on merits. It is a well settled principle of law by the decision of various courts that even in a case of non-appearance by the assessee, appellate authority should decide and dispose off the appeal on merits. In the present case, the Ld.CIT(A) dismissed the appeal filed by the assessee on technical grounds and however, not adjudicated the issues on merits. We further noted that under similar circumstances, the ITAT Chennai Benches in the assessee's own case for AY 2015-16 in ITA No.694/Chny/2023 dated 31.08.2023 restored the issue to the file of the Ld.CIT(A) for fresh adjudication. Therefore, considering the facts and circumstances of the case and also consistent with view taken by the co-ordinate Bench in the assessee's own case for earlier assessment year, we are of the considered view that the appeal needs to go back to the file of the Ld.CIT(A) to give one more opportunity of hearing to the assessee. Thus, we set aside the order of the Ld.CIT(A) and restore the issue back to the file of the Ld.CIT(A) for fresh adjudication. The Ld.CIT(A) is directed to decide the issue after providing reasonable opportunity of hearing to the assessee. We further direct the Ld.CIT(A) to condone the delay of 35 days in filing of the appeal, because, the reasons given by the assessee in his petition before the Ld.CIT(A) are ***bona fide*** and are comes under reasonable cause for condonation of delay. Needless to say, assessee shall appear before the

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Ld.CIT(A) and file necessary evidences to justify its case without seeking any adjournment.

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

Order pronounced on the 20th day of October, 2023, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 20th October, 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 फाइल/GF