

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' /SMC BENCH, CHENNAI
जस्टिस श्री चंद्रकांत वसंत भडंग, अध्यक्ष एवं श्री मंजुनाथ.जी. लेखा सदस्य के समक्ष
BEFORE Mr.JUSTICE (RETD.) C.V. BHADANG, PRESIDENT
AND SHRI MANJUNATHA.G, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.1226/Chny/2023

(निर्धारणवर्ष / Assessment Year: 2010-11)

Mr. Muthusamy Viknesh Kumar 5/242-A, Teachers Colony, Namakkal-637 001.	Vs	Income Tax Officer, Ward-1, Namakkal.
PAN: AGNPV 1117G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. G.Baskar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. P.Sajit Kumar, JCIT

सुनवाईकीतारीख/Date of hearing	:	23.01.2024
घोषणाकीतारीख /Date of Pronouncement	:	23.01.2024

आदेश / ORDER

PER MANJUNATHA.G AM:

This appeal filed by the assessee is directed against order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 14.08.2023 and pertains to assessment year 2010-11.

2. At the outset, learned AR for the assessee submitted that the appeal filed by the assessee is time barred by 24 days for which necessary petition for condonation of delay along with affidavit explaining the reasons for the delay has been filed. The Ld. AR further submitted that the assessee could not file appeal within the time allowed under the Act, and the delay in filing appeal is neither intentional nor willful but for the

unavoidable reasons, therefore, delay may be condoned in the interest of advancement of substantial justice.

3. The learned DR, on the other hand, strongly opposing condonation of delay petition filed by the assessee submitted 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 and considered the petition filed by the assessee for condonation of delay, 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 is admitted for adjudication.

5. The assessee has raised following grounds of appeal:-

- “1. The Commissioner of Income-tax (Appeals) is not justified in dismissing the appeal, for the reason that the assessee did not respond to the hearing notices.*
- 2. Contents of the Grounds of Appeal ought to have been discussed.*
- 3. While the Commissioner (Appeals) has relied on a few decisions, a later order dated 15-05-2015 of Jurisdictional Appellate Tribunal, Chennai Bench, passed in R.Mahalakshmi vs. Deputy Commissioner of Income-tax, has required grounds to be dealt with (Copy attached).*
- 4. While the appellant regrets very much for non-responses, they were only due to relying on incorrect advices got.*

5. Consideration of Rs.1 lakh received for sale of an agricultural land of assessee's mother on 12-07-2004 according to Document registered as 1490/2004 and its accretions were available to make a part of gross cash deposits of Rs.19,04,300/- into bank.
6. As the appellant was married only on 07-11-2011, income from the agricultural lands could be saved as sources.
7. Assessee's salary income of Rs. 1.6 lakhs from Prem Durai Exports, Tirupur and his father's earnings from commission and money lending transactions made through assessee's bank account were also available sources.
8. Even otherwise, only maximum peak credit balance of Rs.50,000/- as 20-11-2009 alone ought to have been considered, alternately, as contended by the Grounds of Appeal, before Commissioner (Appeals).
9. Charging interest under section 234 is mandatory only on tax on income returned and not on tax on unanticipated additions made on assessment is not correct as held in 278 ITR 47 or 198 CTR 670 Uttaranchal High Court - (CIT & Anr. Vs. Reading & Bates Exploration Co.), 299 ITR 286 or 110 ITD 24 or 111 TTJ 55 Mum AT- (Datamatics Ltd. vs. ACIT) and 187 DTR 49 or 77 ITR 91 or 203 TTJ 925 Ranchi AT - (Bajrang Lal Naredi vs. ITO). Probable view that such charging is mandatory is not proper, as if so, these decisions would not have been rendered. If Assessing Officer does not follow these precedent decisions of higher appellate authorities, they should be, distinguished on facts."

6. Brief facts of the case are that, it was noticed from AIR information that the assessee has made cash deposits amounting to Rs.19,04,300/- into his savings bank account during the financial year 2009-10 relevant to the assessment year 2010-11. However, on verification it is found that the assessee has not filed his return of income for the said assessment year. Therefore, assessment has been reopened u/s.147 of the Act and accordingly, notice u/s.148 of the Act dated 31.03.2017 was issued and served on the assessee. The assessee neither appeared nor filed any reply. Therefore, the Ld. Assessing Officer passed best judgement assessment u/s.144 r.w.s. 147 of the Act on 20.11.2018 and determined

total income of Rs.19,04,300/- by making additions towards unexplained/unproven cash deposits into bank account.

7. Aggrieved by the assessment order, the assessee preferred appeal before the Ld.CIT(A). Before the CIT(A), the assessee neither appeared nor filed any details, which is evident from para 4 of the CIT(A) order, where the CIT(A) has provided four dates of hearing to the assessee, but there was no response from the assessee. Therefore, the CIT(A) disposed off the appeal filed by the assessee ex-parte for non-prosecution.

8. The Ld. counsel for the assessee submitted that the assessee could not appear before the CIT(A) and file necessary evidences because, the Consultant, who represent the case of the assessee before the CIT(A) was not advised the case properly. Therefore, the counsel submitted that one more opportunity of hearing may be given to the assessee to substantiate his case before the CIT(A).

9. The Ld. DR Shri P.Sajit Kumar for the Revenue, supporting order of the Ld.CIT(A), submitted that when appellant is not sincere in prosecuting their appeal before appellate authorities have left with no choice, but to dispose off

the appeal. In the present case, although the CIT(A) has given sufficient opportunity to the assessee, appellant neither appeared nor filed relevant details. Therefore, there is no reason to give another opportunity to the assessee and thus, appeal filed by the assessee may be dismissed.

10. We have heard both the parties, perused material available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee is non-cooperative to the proceedings which is evident from the fact that, even before the Assessing Officer, the assessee did not appear and file necessary details to justify cash deposits into the bank account. The said lapse is still continued even before the Ld.CIT(A), where it is evident that although the CIT(A) has given sufficient opportunity of hearing to the assessee, the assessee could not avail opportunity given by the CIT(A) and file necessary details to substantiate his case. Therefore, the Ld.CIT(A) has disposed off the appeal filed by the assessee for non-prosecution. No doubt, when the appellant is not serious in prosecuting the appeal, the appellate authorities have left with no choice, but to dispose off the appeal, but such appeal should be disposed on

merits on the basis of materials available on record. In the present case, the CIT(A) dismissed the appeal filed by the assessee for non-prosecution without discussing the issues on merits. Therefore, in our considered view, one more opportunity of hearing should be given to the assessee to explain his case before the CIT(A). Thus, we set aside order of the CIT(A) and restore the issue back to the file of CIT(A) with a direction to reconsider the issue in accordance with law, after providing reasonable opportunity of hearing to the assessee. Needless to say, the assessee shall appear before the CIT(A) without seeking any adjournment unless or otherwise, necessary.

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

Order pronounced in the open court on 23rd January, 2024

Sd/-

(**जस्टिस चंद्रकांत वसंत भडंग**)

(**JUSTICE (RETD.) C.V. BHADANG**)

अध्यक्ष / President

चेन्नई/Chennai,

दिनांक/Dated : 23.01.2024

DS

Sd/-

(**मंजुनाथ.जी**)

(**Manjunatha.G**)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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