

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' 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, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1298/Chny/2023

निर्धारण वर्ष / Assessment Year: 2017-18

Covai Sri Vishali Jewellers,  
598-B, Big Bazaar Street,  
Coimbatore – 641 001.

**[PAN: AAGFC-1063-M]**

(अपीलार्थी/Appellant)

Income Tax Officer  
v. Non Corporate Ward -1(4),  
Coimbatore.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. Suraj Nahar, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 23.01.2024

घोषणा की तारीख/Date of Pronouncement

: 23.01.2024

**आदेश / O R D E R**

**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 22.09.2023 and pertains to assessment year 2017-18.

2. The brief facts of the case are that, the appellant is a partnership firm engaged in the business of trading in jewellery. The assessee has filed its return of income for the

assessment year 2017-18 on 07.11.2017, admitting an income of Rs. 1,75,170/-. The case was selected for scrutiny. During the course of assessment proceedings, the Assessing Officer noticed that, the partners have introduced additions to capital accounts and thus, called upon the assessee to file necessary evidences to prove source for capital introduction. In response the assessee vide letter dated 24.12.2019 explained that, source for capital introduction in the capital account of partners is out of cash gift received from Shri. V. Mohan, father of Mr. K. Madhuranthagi, out of sale of agricultural land at Dindigul. The Assessing Officer, however was not satisfied with the explanation furnished by the assessee and according to the Assessing Officer, the assessee could not explain source for credit in capital gain of partners and thus, made addition of Rs. 20,00,000/- to the total income.

3. The assessee carried the matter in appeal before the first appellate authority. Before the Id. CIT(A), the assessee neither appeared nor filed any evidences which is evident from Para 4.1 of Id. CIT(A) order, where it was observed that despite giving various dates of hearing, the assessee did not

file any response. Therefore, the Id. CIT(A) dismissed appeal filed by the assessee *exparte* for non-prosecution.

4. The Ld. Counsel for the assessee, submitted that the Id. CIT(A) dismissed appeal filed by the assessee on technical grounds without discussing the issues on merits, even though it is a well established principle of law that, appeal should be disposed on merits on the basis of material available on record. Therefore, he submitted that appeal may be set aside to the file of the Id. CIT(A) to give one more opportunity of hearing to the assessee to explain its case.

5. The Id. DR, present for the revenue supporting the order of the Id. CIT(A) submitted that, when the appellant is not vigilant in prosecuting their appeal with utmost care, then the appellate authorities left with no choice but to dispose off the appeal. In the present case, the first appellate authority has given sufficient opportunities, but the appellant could not availed the opportunity and justified its case. Therefore, the Id. CIT(A) has rightly disposed off, appeal filed by the assessee and their order should be upheld.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the appellant could not justify its case with necessary evidences, even though the first appellate authority has provided sufficient opportunity of hearing to the assessee. In fact, the Id. CIT(A) has provided ample opportunities to the assessee, which is evident from Para 4.1.2 of Id. CIT(A) order. But fact remains that, the Id CIT(A) has disposed off appeal filed by the assessee on technical ground, without considering the issues on merits. It is a well settled principle of law by the decisions of various courts that, even though the appeal is disposed off for non-prosecution by the appellant, but such appeal should be disposed off on merits on the basis of materials available on record. In the present case, the Id. CIT(A) dismissed appeal filed by the assessee by following the decision of ITAT Delhi Benches in the case of CIT vs Multiplan India Pvt Ltd, 38 ITD 320 (Del) for non-prosecution, contrary to settled position of law. Therefore, we are of the considered view that the appeal needs to be set aside to the file of the CIT(A) to give one more opportunity of hearing to the appellant to explain its case. Thus, we set aside the order passed by the Id. CIT(A) and

restore the issue back to the file of the Id. CIT(A) with the direction to reconsider the issue in accordance with law after providing reasonable opportunity of being heard to the appellant. Needless to say, the appellant should file necessary evidences as and when called for by the first appellate authority, without seeking any further adjournment.

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

Order pronounced in the open court on 23<sup>rd</sup> January, 2024 at Chennai.

Sd/-

(जस्टिस चंद्रकांत वसंत भडंग)

**(JUSTICE (RETD.) C.V. BHADANG)**  
अध्यक्ष/**PRESIDENT**

Sd/-

(मंजुनाथ. जी)

**(MANJUNATHA. G)**  
लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 23<sup>rd</sup> January, 2024

**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