

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथा. जी, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1504/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2013-14

M/s. Blessing Agro Farm India
Limited,
1E, 1K, SS Colony,
Madurai,
Tamil Nadu – 625 010.

[PAN: AADCB-6709-R]

(अपीलार्थी/Appellant)

The Income Tax Officer,
v. Corporate Ward -1,
Madurai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. P.M. Kathir, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 19.02.2024

घोषणा की तारीख/Date of Pronouncement

: 19.02.2024

आदेश /ORDER

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 26.09.2023 and pertains to assessment year 2013-14.

2. At the outset, we find that there is a delay of 23 days in filing of appeal before the Tribunal, for which a petition along with affidavit explaining reasons for delay in filing has been filed. The Ld. Counsel for the assessee, referring to petition filed by the assessee submitted that, the assessee was on-going certain legal issues and in the process lost sight of notices issued by the Id. CIT(A) and order passed by the Id. CIT(A) dated 26.09.2023. However, the appellant has taken steps to file appeal immediately after noticing that the order was passed by the first appellate authority, and in the process there was a delay of 23 days, but the delay in filing of appeal is neither intentional nor for wanton of any undue benefit. Therefore, in the interest of justice, the delay may be condoned.

3. The Id. DR, on the other hand referring to petition filed by the assessee submitted that, the reasons given by the assessee for non-filing of appeal within prescribed limit does not come under reasonable cause and thus, the appeal filed by the assessee should not be admitted.

4. We have heard both the parties and considered relevant reasons given by the appellant for non-filing of appeal within due date prescribed under the Act. Although, we are not convinced with reasons given by the assessee for delay in filing of appeal, but considering the smallness of delay of 23 days in filing of appeal and also for advancement of substantial justice, we condone the delay in filing of appeal and admit appeal filed by the assessee for adjudication.

5. The brief facts of the case are that, the appellant M/s. Blessing Agro Farm India Ltd., is engaged in the business of sale of plots. The appellant company filed its return of income for the assessment year 2013-14 on 28.09.2013, declaring total income of Rs. 4,66,810/- and said return was revised on 28.09.2013 declaring total income of Rs. 4,66,810/-. The case was subsequently re-opened u/s. 147 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and notice u/s. 148 of the Act, dated 30.03.2021 was issued and served on the assessee. The case was selected for scrutiny and during the course of assessment proceedings, notices u/s. 142(1) of the Act was issued on various dates and called upon the assessee to furnish necessary evidences with regard to unexplained

credits in its bank account. In response to notice u/s. 142(1) of the Act, the assessee vide letter dated 03.01.2022 submitted that, due to on-going investigation under SEBI laws, it could not gather necessary evidences to represent its case and thus, sought some time to appear before the Assessing Officer. The case was posted once again on 10.03.2022, but the assessee neither appeared nor filed any details. Therefore, the Assessing Officer passed best judgment assessment u/s. 147 r.w.s. 144B of the Act, dated 30.03.2022 and determined total income of Rs. 1,56,76,055/-, by making addition of Rs. 1,52,09,245/- towards credits into bank account.

6. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A), and such appeal has been filed with a delay of 136 days. The Id. CIT(A) has posted the case for hearing on various dates, but the assessee neither appeared nor furnished any details. Therefore, the first appellate authority passed exparte appellate order and upheld additions made by the Assessing Officer towards credits in bank account. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

7. The Ld. Counsel for the assessee, submitted that the Id. CIT(A) erred in sustaining additions made by the Assessing Officer towards credits in bank account, without providing sufficient opportunity of hearing to the assessee, which is evident from the fact that, although the appellant has sought sufficient time to file necessary details, but the Id. CIT(A) has disposed off appeal and decided the issue without considering the issue on merits. Therefore, he submitted that the matter may be set aside to the file of the Assessing Officer to give one more opportunity of hearing to the assessee.

8. The Id. DR, Shri. D. Hema Bhupal, JCIT, on the other hand supporting the order of the Id. CIT(A) submitted that, the assessee is non-cooperative at all stages of proceedings, which is evident from the assessment order passed by the Assessing Officer, where the Assessing Officer has passed best judgment assessment, in absence of necessary details from the assessee. The assessee did not appear even before the Id. CIT(A), which is evident from the order passed by the Id. CIT(A), where number of opportunities was given to the assessee, but the assessee neither filed any details or

explained reasons for non-appearance. Therefore, there is no reason to give another opportunity of hearing to the assessee.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, the assessee is non-cooperative at all stages of proceedings, which is evident from exparte assessment order passed by the Assessing Officer and exparte appellate order passed by the Id. CIT(A). Further, the appellant could not explain proper reasons for non-appearance before the Assessing Officer and Id. CIT(A). From the above, it is undoubtedly clear that, assessee is very casual in his approach before the authorities and said approach cannot be appreciated. Further, although the Id. CIT(A) has disposed off appeal filed by the assessee, but such appeal has been dismissed on technical grounds, without considering the issue on merits. It is a well settled principle of law by the decisions of various courts that, even in a case of appeal being disposed off for non-prosecution of the appellant, the said appeal should be disposed off on merits, on the basis of material available on record. Since, the Id. CIT(A) has dismissed appeal filed by the assessee without considering the issue on merits, in our

considered view the assessee deserves one more opportunity of hearing before the Assessing Officer. But, the assessee should get another opportunity subject to payment of nominal cost for non-serious in prosecuting its case before the authorities. Thus, we set aside the order passed by the Id. CIT(A) and restore the issue back to the file of the Assessing Officer to give one more opportunity of hearing to the assessee to substantiate its case with necessary evidences. The assessee is directed to pay nominal cost of Rs. 25,000/- to State Legal Aid Authority, Hon'ble High Court of Madras and produce necessary proof of payment to the Registry within 15 days from the date of this order.

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

Order pronounced in the open court on 19th February, 2024 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /Vice President

Sd/-
(मंजूनाथा. जी)
(MANJUNATHA. G)
लेखासदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 19th February, 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