

आयकर अपीलिय 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.: 1429/Chny/2023

निर्धारण वर्ष / Assessment Year: 2012-13

Mr. Gopal Ganesan,
No.89, Kommandamparai,
Pichanur,
Coimbatore – 641 105.

[PAN: AJDPG-2120-P]

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

सुनवाई की तारीख/Date of Hearing

घोषणा की तारीख/Date of Pronouncement

v. Assistant Commissioner of
Income-tax,
Non-Corporate Circle -4,
Coimbatore – 641 018.

(प्रत्यर्थी/Respondent)

: Shri. H. Yeshwanth Kumar, CA

: Shri. D. Hema Bhupal, JCIT

: 20.02.2024

: 20.02.2024

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 06.10.2023 and pertains to assessment year 2012-13.

2. At the outset, learned AR for the assessee submitted that the appeal filed by the assessee is time barred by 1 day

for which necessary petition for condonation of delay along with affidavit explaining the reasons for the delay has been filed. The AR further submitted that, the assessee could not file appeal within the time allowed under the Act, due to the fact that appeal papers were sent by courier from Coimbatore to Chennai, due to landfall of cyclone Michaung on 04.12.2023 & 05.12.2023, the appeals were received by the authorized representative only on 06.12.2023, which caused delay of 1 day. 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. Having considered the period of delay and reasons filed in affidavit, in the interest of natural justice, we condone the delay in filing of appeal and admit the appeal for adjudication.

4. The brief facts of the case are that, the appellant was engaged in real estate business and executed labour contract for the relevant assessment year. The case was 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 10.05.2016

was issued and served on the assessee. In response, the assessee has filed return of income declaring total income of Rs. 18,70,667/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has paid cash in excess of Rs. 20,000/- in violation of provisions of section 40A(3) of the Act, for purchase of land and thus, called upon the assessee to file necessary details and also explain as to why cash payment in excess of prescribed limit cannot be disallowed u/s. 40A(3) of the Act. The assessee had also incurred commission expenses in cash in excess of prescribed limit. Therefore, the Assessing Officer made additions of Rs. 97,06,400/- u/s. 40A(3) of the Act. The assessee carried the matter in appeal before the first appellate authority, but neither appeared nor filed any details, even though the Id. CIT(A) had given sufficient opportunities to the assessee. Therefore, the Id. CIT(A) by following certain judicial precedents dismissed appeal filed by the assessee and upheld additions made by the Assessing Officer towards cash payment u/s. 40A(3) of the Act. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

5. The Ld. Counsel for the assessee, submitted that the Id. CIT(A) dismissed appeal filed by the assessee without providing reasonable opportunity of hearing, in violation of principle of natural justice and thus, in the interest of natural justice, one more opportunity of hearing may be given to the assessee to explain its case before the Id. CIT(A).

6. The Id. DR, on the other hand supporting the order of the Id. CIT(A) submitted that, although the Id. CIT(A) has given sufficient opportunities to the assessee to justify its case, but the assessee neither appeared nor filed any details. Further, the appellant could not explain as to why he could not appear before the Id. CIT(A). Therefore, he submitted that if at all the assessee needs one more opportunity, subject to payment of cost the matter may be set aside to the file of the Id. CIT(A).

7. 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 CIT(A). 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 CIT(A) 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. 10,000/- 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.

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

Order pronounced in the open court on 20th 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 20th 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