

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri Manjunatha, G., Accountant Member

आयकर अपील सं./I.T.A. No.729/Chny/2023
निर्धारण वर्ष/Assessment Year: 2017-18

Radha Diamonds,
371, Nethaji Road,
Erode 638 001, Tamil Nadu.

Vs. The Income Tax Officer,
Circle 1, Erode.

[PAN:AAIFR0066K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri V. Nandakumar, CIT
सुनवाई की तारीख/ Date of hearing : 27.03.2024
घोषणा की तारीख /Date of Pronouncement : 05.04.2024

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Principal Commissioner of Income Tax, Coimbatore-1, Coimbatore, dated 23.03.2022 relevant to the assessment year 2017-18 passed under section 263 of the Income Tax Act, 1961["Act" in short].

2. The appeal filed by the assessee is delayed by 386 days in filing the appeal. The assessee filed condonation petition for the delay in form of an affidavit duly notarized. In the affidavit, the assessee has stated as under:

I state that the impugned order dated 23.02.2022 ought to have been appealed against within the stipulated time period prescribed under the Act. However, the Petitioner / Appellant is now filing the appeal belatedly. I state that the delay in filing the appeal against the impugned order is neither willful nor deliberate but due to circumstances beyond the control of the Petitioner / Appellant.

I state that the revision order was received in the month of April 2022 and I state that the said order was handed over to the CA's office immediately for taking further course of action. I state that the complexities involved in understanding the proceedings of revision with a view to challenge the jurisdiction of PCIT to pass the revision order was not understood by the Petitioner / Appellant as well in the office of the CA, as there was a complete vacuum in the office of S.Raghuraman, Chartered Accountant who died at a young age on 11.07.2021, without leaving behind any qualified Chartered Accountant in his office.

I state that the office of the revision order was not understood as well as not attended to by the assistants working in the office of the late CA and I state that the effect giving order passed by the JAO on 27.03.2023, creating a demand was also handed over to CA's office immediately thereafter especially in view of late CA's son S.R. Srivatsan, who after qualifying himself as CA on 13.01.2023 took over his father's professional office.

I state that the office of the CA took the legal advice from the counsel on record and instructed them to prepare belated appeal against the revision order dated 23.03.2022 and simultaneously to prepare the appeal against the effect giving order dated 27.03.2023. Accordingly, I state that appeal against the impugned order is prepared and filed along with this affidavit in the registry of ITAT, Chennai on this date with a plea for admission of the appeal for adjudication of the issues on merits.

In such circumstances, the delay in filing the appeal against the revisional order dated 23.03.2022 may be condoned and the issues on merits may be adjudicated in the interest of justice.

3. The assessee also filed a supplementary affidavit by mentioning the number of days of delay in filing the appeal. By referring to the above affidavit, the Id. Counsel for the assessee has submitted that there is reasonable cause for the delay and the delay in filing the appeal is neither

wilful nor wanton and prayed for condonation of delay and to admit the appeal for adjudication. Against the above submissions, the Id. DR has not raised any serious objection. Considering the facts and circumstances, we hereby condone the delay in filing the appeal and admit the appeal for adjudication subject to the condition that the assessee should pay ₹.5,000/- to the State Legal Aid Authority, Hon'ble Madras High Court and produce necessary proof of payment of cost before the Registry of ITAT.

4. Brief facts of the case are that the assessee is a partnership firm and filed the return of income for the assessment year 2017-18 on 25.10.2017 declaring a total income of ₹.94,03,291/-. The return filed by the assessee was selected for complete scrutiny to verify the cash deposits during demonetization. Notice under section 143(2) of the Act was issued to the assessee on 21.08.2018 and the same was duly served. Notice under section 142(1) of the Act was issued on 29.05.2019 along with questionnaire. Further, a detailed show cause notice dated 28.11.2019 was also issued to the assessee asking the assessee to file the reply. In response to the above, the assessee filed the details. After considering the details furnished by the assessee, the Assessing Officer

has completed the assessment under section 143(3) of the Act dated 19.12.2019 by accepting the returned income of the assessee.

5. Subsequently, on an examination of the assessment records, the Id. PCIT has noticed that the assessment order passed under section 143(3) of the Act was found of consisting certain errors which was prima facie prejudicial to the interest of revenue. Accordingly, the Id. PCIT issued a notice under section 263 of the Act dated 14.03.2022 for filing objections if any to the proposed revision. The reason for considering the order of assessment as erroneous and prejudicial to the interest of revenue was also furnished to the assessee. However, there was no response from the assessee either personally through its AR or filed any written submissions against the notices issued by the Id. PCIT. From the assessment record of the assessee, the Id. PCIT has observed that there is a wide variance of average sales prior to demonetization and post demonetization when compared to the VAT returns and also the GP ratio and NP ratio furnished by the assessee. The Id. PCIT has also observed that the abnormal cash sales shown before demonetization period appears to be an artificial one and just to circumvent the law and suit their own needs to deposit the unaccounted cash available with the assessee during demonetization period. Thus, the Id. PCIT set aside the

assessment order passed under section 143(3) of the Act and directed the Assessing Officer to re-do the assessment afresh after verification of facts by affording adequate opportunity of being heard to the assessee.

6. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. counsel for the assessee has submitted that without granting reasonable time to respond to the show-cause notice dated 14.03.2022, the Id. PCIT has hurriedly concluded the revision order dated 23.03.2022.

7. On the other hand, the Id. DR supported the order passed by the Id. PCIT.

8. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Against the assessment order passed under section 143(3) of the Act, the Id. PCIT was of the opinion that the assessment order consisting certain errors which was *prima facie* prejudicial to the interest of revenue and issued show-cause to the assessee to file its objections, if any. On perusal of the revision order, we find that by giving just seven working days for filing reply to the show-cause notice, the Id. PCIT has concluded the revision order under section 263 of the Act dated 23.03.2022. We are of the opinion that the assessee should have been given reasonable opportunity

of being heard for filing its reply. Accordingly, we set aside the revision order passed under section 263 of the Act and remit the matter back to the file of the Id. PCIT to afford reasonable opportunity of being heard to the assessee for filing its reply to the queries raised by the Id. PCIT.

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

Order pronounced on 05th April, 2024 at Chennai.

Sd/-
(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 05.04.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT,
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.