

आयकर अपीलिय अधिकरण, 'बी' (एस एम सी), न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' (SMC) BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA No.: 1510/CHNY/2023

निर्धारण वर्ष/Assessment Year: 2017-18

**Shri Padambakandar
Veerakkutti,**
39B, North Street,
Velur (PO), Paramathi Velur TK,
Namakkal – 638 182.

The Income Tax Officer,
Vs. Ward 2,
Namakkal.

PAN: AAZPV 0970H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri T.S. Lakshmi Venkatraman,
F.C.A

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 22.02.2024

घोषणा की तारीख/Date of Pronouncement

: 22.02.2024

आदेश/ ORDER

This appeal by the assessee is arising out of the order of the Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2023-24/1055555919 (1) dated 29.08.2023. The assessment was framed by the Income Tax Officer, Ward 2, Namakkal for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 04.12.2019.

2. At the outset, it is noticed that this appeal is barred by limitation by 51 days. The facts regarding delay are that the order of CIT(A) is dated 29.08.2023 and as per Form No.36, according to assessee the date of service or communication of the appellate order is also 29.08.2023. The appeal should have been filed on or before 28.10.2023 but actually appeal was filed only on 18.12.2023 thereby delay of 51 days. The Id.counsel for the assessee supported the condonation petition by affidavit and reasons stated in para 3 of the affidavit reads as under:-

3. The delay of 51 days in filing the above appeal happened because of the following reasons:

- a) I was represented by Mr.S. Manoharan, Income Tax Practitioner, Velur Post Office, Paramathi Velur Taluk, Namakkal District-638182. Due to lack of proper professional guidance the appeal preferred by me before the first Appellate authority went unrepresented and since the written submissions were not filed, the appeal has been dismissed by the First Appellate Authority.*
- b) The appellate order was shown to the above tax practitioner who could not give proper professional advise and the matter was getting delayed. In view of this I contacted Sri T.S. Lakshmivenkataraman Chartered Accountant, Salem in the first week of December 2023 along with the appellate order dated 29.08.2023. He suggested that an appeal has to be filed in ITAT Chennai immediately and the appeal was filed on 18.12.2023. The papers for filing the appeal were prepared by the above Chartered Accountant and he also suggested for the delay in filing the appeal, delay condonation petition could be filed at the time of appeal hearing.*

- c) *Apart from the lack of proper professional guidance as stated above due to my age factor I am having heart problem and I am aided by pacemaker for keeping good functioning of the heart. This also contributed for the delay in filing the appeal.*
- d) *Apart from the above factors the concept of “Real Time alert” is not available in the National Faceless Appeal Scheme. The above concept has not been inducted into the National Faceless Appeal Scheme, 2023 and hence neither the appellant nor his authorized representative had been served with any notices vide email or to their mobile.*
- e) *The small delay of 51 days in filing the appeal is neither willful nor wanton.*

When these reasons were confronted to Id. Senior DR, he could not controvert the above facts.

2.1 After hearing both the sides and going by the reasons that the real time alert in the National Faceless Appeal Scheme has been newly introduced concept and moreover there was advice given to assessee by his Income Tax Practitioner Shri S. Manoharan, that the delay is due to him only. I find that the cause is reasonable and hence, I condone the delay and admit the appeal.

3. The only issue in this appeal of assessee is as against the exparte order passed by the CIT(A) sustaining the addition made

by AO of Rs.13.62 lakhs being unexplained money u/s.69A of the Act being cash deposit out of sale of mobile top-up, assessee being authorized Vodafone distributor for prepaid SIM during demonetization period in Specified Bank Notes (SBNs) and assessed u/s.115BBE of the Act. For this, assessee has raised various grounds which are argumentative, factual and hence need not be reproduced.

4. I have heard rival contentions and gone through facts and circumstances of the case. I noted that the assessee is an individual doing authorized Vodafone Pre-paid Distributer of SIM and made cash deposit during demonetization period in his bank account maintained with State Bank of India, P.Velur Branch, Namakkal for an amount of Rs.31,55,340/- out of which the demonetized currency was to the extent of Rs.13.62 lakhs. As there was no explanation filed before the AO, the AO treated the entire unexplained cash deposit u/s.69A of the Act and taxed u/s.115BBE of the Act. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) also dismissed the appeal of assessee by stating in para 8.6 as under:-

“8.6 In the present case it is seen that the A.O has considered and allowed those cash deposited which were permitted for the business of the assessee as per the Gazette notifications issued from time to time. However, with regards to the balance amount of Rs.13,62,000/- as

noted by the A.O, the source of the same was not explained by the assessee. Furthermore, even in the present appellate proceedings there has not been any compliance to any of the notices issued. The contentions of the appellant raised in the statement of facts or the grounds of appeal are not backed by any documentary evidence and hence do not merit acceptance. It is for the appellant to submit a detailed explanation along with paper evidence to support the grounds of appeal and to contradict the findings of the A.O. in the assessment order, which he has failed to do. No evidence has been submitted to prove the genuineness and source of the cash deposits made in the bank account. Accordingly, I am left with no option but to conclude that the appellant has failed to discharge the burden of proof cast u/s 69A of the Act. Accordingly, the addition is upheld and the Grounds of Appeal are Not Allowed.”

Though the assessee could not submit any evidence before CIT(A) or before AO and CIT(A) fixed the appeal atleast three times, but going through the order of CIT(A), it is noted that the CIT(A) has not passed the order on merits rather it is a cryptic order. Admittedly, the assessee is an Authorized Vodafone Distributer of SIM and whether this category falls under exempted category or not, it has to be examined. The assessee has to file complete details before AO as and when the case is fixed for hearing. Accordingly, the order of AO and CIT(A) is set aside and matter restored back to the file of the AO as the order of AO as well as the CIT(A) is without going into any enquiry or investigation. Hence, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court at the time of hearing on 22nd February, 2024 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 22nd February, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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