

आयकर अपीलीय अधिकरण, बी, 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./I.T.A. No.1488/CHNY/2023
निर्धारण वर्ष/Assessment year : 2017-2018.

Arunagiri,
No.11B, Carmel Madam Street,
Muthialpet,
Pondicherry 605 003.

Vs. The Income Tax Officer,
Ward 1,
Pondicherry.

[PAN ADYPA 2170J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri. S. Girish Kumar, Advocate
: Shri D. Hema Bhupal, IRS, JCIT

सुनवाई की तारीख/Date of Hearing

: 21.02.2024

घोषणा की तारीख /Date of Pronouncement

: 21.02.2024

आदेश/ ORDER

This appeal by assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in Order No.ITBA/NFAC/S/250/2023-24/1055201895 (1), dated 17.08.2023. The assessment was framed by the Income Tax Officer, Ward 1, Puducherry for the assessment year 2017-2018 passed u/s.143 (3) of the Income Tax Act, 1961 (in short 'the Act') vide order dated 21.12.2019.

2. At the outset, it is noticed by the Registry that this appeal filed by the assessee is barred by limitation by 60 days. The registry had pointed out defect to the assessee and the assessee had filed condonation petition alongwith affidavit. As per form No.36, the order of the Id. CIT(A) dated 17.08.2023 was served on assessee on 17.08.2023 and the appeal was filed by assessee in form No.36 before the Tribunal on 15.11.2023. Thereby there is a delay of sixty days. Assessee contended that the delay is not intentional but it has happened due to lack of coordination between the Chartered Accountant and the assessee. Assessee pointed out the following reasons in the affidavit for the delay.

'The impugned order dated 17.08.2023 passed by the NFAC, Delhi ought to have been challenged on or before the prescribed due date but the appellant could not file the appeal within the stipulated time as the notices and order were sent to the email id of the Chartered Accountant i.emaheshbala101010@gmail.com which email id was given at the time of filing the appeal on 20.01.2020. However, the said email id was not put to regular use by the Chartered Accountant and therefore failed to respond to the notices and also failed to file the appeal against the order within the stipulated time.

The Appellant on receiving the communication about the passing of the order took steps to file the appeal and the documents were sent to the Counsel on record through the Chartered Accountant. The Counsel on record prepared the appeal immediately and sent it to the appellant's chartered accountant on 21.11.2023. However, the Chartered

Accountant's office failed to communicate the same to the appellant immediately whose residence is at Pondicherry and there was a lack of co-ordination which delayed the process and the appeal was filed on 15.12.2023 with a delay of 60 days''.

3. When these facts were confronted to Id. Sr. Departmental Representative, he objected for condoning the delay.

4. After hearing the rival contention and going through the affidavit, I noted that there was communication failure between the Counsel on record who prepared the appeal papers and the Chartered Accountant whose office failed to communicate the appeal papers to the assessee. I find the cause as reasonable and hence, condone the delay and admit the appeal.

5. The only issue in this appeal before me is with regard to the order of the Id. CIT(A) confirming the action of the Id. Ld. Assessing Officer in making addition of cash deposited in bank during demonetization period in demonetized currency of Rs.8,16,000/- by non consideration of issue on merits, addition made in the assessment order to the tune of Rs.5,25,600/- being the presumed differential sum between the opening stock and closing stock of the year under consideration and the previous year and disallowance of claim of interest on housing loan to the tune of Rs.1,35,774/-.

6. According to the Id. Counsel for the assessee the order of the Id. CIT(A) is ex-parte and without adjudicating anything on merits, the Id. CIT(A) passed ex-parte order just for non prosecution of appeal and the final findings of the Id. CIT(A) recorded is as under:-

'5.4 In view of the above, it is clear that the Appellant is not aggrieved with the assessment order impugned herein and is not interested in prosecuting the same. Accordingly, the additions/disallowances as challenged in the Grounds of Appeal and in the Appeal Memo are hereby confirmed.

5.5 Based on the above it appears that the assessee is not keen on pursuing the appeal. Accordingly given that this office has not received any information or document so as to make a judgment based on merits, this office is left with no option but to dismiss this appeal. Accordingly the appeal of the assessee stands dismissed".

7. When these facts were confronted to Id. Senior DR, he could not controvert the fact that the order of CIT(A) is for non-prosecution and there is no adjudication by CIT(A) at all.

8. I have heard the rival contention and perused the material on record. I noted that the CIT(A) passed ex-parte order just simplicator without deliberately going into merits, which is not permissible in law. Hence, I after going through the orders of the lower authorities that is, Id. Assessing Officer & Id. CIT(A), remand the matter back to the file of the Id. Assessing Officer to re-decide the appeal fresh after issuing proper

opportunity of being heard. In term of the above, I remand the matter back to the file of the Id. Assessing Officer for re-deciding denovo.

9. In the result, the appeal of the assessee in ITA No.1448/Chny/2023 for assessment year 2017-2018 is allowed for statistical purpose.

10. Order pronounced in the open court at the time of hearing on 21st day of February, 2024, at Chennai.

Sd/-
(महावीरसिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/VICE PRESIDENT

चेन्नई/Chennai

दिनांक/Dated:21 .02.2024.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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