

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **188/CHNY/2023**  
निर्धारण वर्ष/Assessment Year: 2016-17

**Shri Ashokan**  
**Thiripurasundari,**  
No.1/34, Pillaiyar Koil Street,  
Ayyapanthangal,  
Chennai – 600 056.

**The Assistant Commissioner**  
**of Income Tax,**  
Vs. Central Circle 3(1),  
Chennai – 34.

**PAN: AAAPT 7094H**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

विविध याचिका सं / **M.A. No.18/CHNY/2023**  
(arising in I.T.A. No. 44/CHNY/2022)  
निर्धारण वर्ष / Assessment Year : 2016-17

**The Assistant Commissioner**  
**of Income Tax,**  
Vs. Central Circle 3(1),  
Chennai – 34.

**Shri Ashokan**  
**Thiripurasundari,**  
No.1/34, Pillaiyar Koil Street,  
Ayyapanthangal,  
Chennai – 600 056.

(अपीलार्थी / Applicant)

**PAN: AAAPT 7094H**  
(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by  
राजस्व कीओर से /Revenue by

: Shri N. Arjun Raj, CA  
: Shri AR.V. Srinivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 20.05.2024  
घोषणा की तारीख/Date of Pronouncement : 20.05.2024

**आदेश / O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-18, Chennai in ITBA/Rec/F/154/2021-22/1040365132(1) dated 04.03.2022. The assessment was framed by the Assistant Commissioner of Income Tax, Central Circle 3(1), Chennai for the assessment year 2016-17 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 15.12.2018.

2. At the outset, it is noticed that this appeal is barred by limitation by 288 days. The assessee has filed condonation petition for condonation of delay supported with affidavit. The rectification order of CIT(A) is dated 04.03.2022 and as per Form No.36, the date of communication of order is also mentioned as 04.03.2022. The appeal was filed by assessee in Tribunal on 15.02.2023, thereby there is a delay of 288 days. The assessee has stated the following reason for delay in its affidavit:-

“I state that the Miscellaneous Application filed by the Revenue in MA No. 18/CHNY/2023 against the order of the Income Tax Appellate Tribunal in ITA No. 44/CHNY/2022 for the assessment year under consideration dated 13.07.2022 was received by me on 06.02.2023 and wherein the revenue had brought to the notice of the bench the fact of passing of the rectification order by the CIT(Appeals) dated 04.03.2022. Accordingly, it was stated by

the revenue that the order of the Appellate Tribunal in setting aside the first order of the CIT(Appeals) dated 30.11.2021 on the ground of violation of principles of natural justice was wrong in view of the rectification order passed by the CIT (Appeals), Chennai - 18 dated 04.03.2022.

I state that the Petitioner / appellant handed over the papers pertaining to the above mentioned M.A. to the Chartered Accountant and I state that based on the advice received from the counsel on record, especially on the necessity to challenge the factual findings recorded in the para 5 of the order dated 04.03.2022, the present appeal is being filed against the said rectification order dated 04.03.2022 on this date with a prayer for the admission of the appeal.

I state that complexities in understanding the position of law in view of the passing of the rectification order and the necessity for filing the appeal against the rectification order would constitute reasonable cause for condonation of delay in filing the present appeal. Thus it is prayed that the delay of 236 days in filing the present appeal may be condoned and that the issues may be adjudicated on merits and thus render justice

On the other hand, the Id.Senior DR opposed condonation of delay.

2.1 After hearing rival contentions and going through the reasons stated in the petition and arguments made by Id.counsel, we are inclined to accept the cause as reasonable and hence, condone the delay and admit the appeal.

3. At the outset, it is noticed that the assessee has filed an appeal in ITA No.44/CHNY/2022 for assessment year 2016-17 and the Tribunal has allowed for statistical purpose by remanding the matter

back to the file of the CIT(A) vide order dated 13.07.2022 by observing in para 4 as under:-

*“4. After hearing rival contentions, we noted that the CIT(A)’s order is ex-parte and the CIT(A) has not considered the written submissions filed by the assessee along with evidences. The CIT(A) fixed this appeal for 3 to 4 times on various dates but assessee’s written submissions along with evidences were never considered. Hence, in the interest of natural justice, we set aside the order of CIT(A) and remand the matter back to his file for fresh consideration of the evidences and written submissions filed by the assessee. The CIT(A) will also provide reasonable opportunity of being heard to the assessee.”*

The assessee also moved an appeal in ITA No.188/CHNY/2023 for the same assessment year 2016-17 against the suo-motto order passed by the CIT(A) u/s.154 of the Act on the application filed by the assessee dated 08.01.2022 stating the reason that due to pandemic situation, assessee submitted her submissions through e-proceedings on ITBA portal on 22.11.2021 and the same was not considered in the appellate order dated 30.11.2021 [which was set aside by this Tribunal and remanded the matter back to CIT(A) for fresh adjudication]. This rectification order passed by the CIT(A) u/s.154 of the Act adjudicating the issue is without jurisdiction as the scope u/s.154 of the Act is limited, limited to rectification of mistake apparent from record and hence, he exceeded his

jurisdiction. However the same issue, the Tribunal has already remitted back to the file of the CIT(A) in assessee's appeal in ITA No.44/CHNY/2022 and the observation of the Tribunal is reproduced above, quoting para 4 of Tribunal's order dated 13.07.2022. Hence, this appeal filed by the assessee in ITA No.188/CHNY/2023 is being dismissed as academic.

4. Coming to the miscellaneous application, the Revenue has moved this miscellaneous application in MA No.18/CHNY/2023 arising out of ITA No.44/CHNY/2022, which has also become infructuous in view of Tribunal setting aside the order of CIT(A) dated 30.11.2021 i.e., in the first round. Hence, this miscellaneous application is also dismissed as infructuous.

4.1 In effect, now only proceeding survives is that of the set aside proceedings before CIT(A) by the Tribunal in ITA No.44/CHNY/2022 for the assessment year 2016-17 and the CIT(A) is directed to decide the appeal *denovo* after allowing reasonable opportunity of being heard to the assessee.

5. In the result, both the appeal filed by the assessee in ITA No.188/CHNY/2023 & the miscellaneous application filed by the Revenue in MA No.18/CHNY/2023 are dismissed.

Order pronounced in the open court at the time of hearing on 20<sup>th</sup> May, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**  
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,  
दिनांक/Dated, the 20<sup>th</sup> May, 2024

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती/Assessee
2. राजस्व/Revenue
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.