

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

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1628/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2017-18

M/s. Shree Adinath EPC
Ventures Pvt Ltd.,
484, Pantheon Plaza,
Pantheon Road,
Egmore, Chennai – 600 008.

[PAN: AALCA-6348-R]

Assistant Commissioner of
v. Income Tax,
Corporate Circle -6(1),
Chennai – 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 08.05.2024

घोषणा की तारीख/Date of Pronouncement

: 29.05.2024

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal by the assessee is filed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2017-18, dated 17.11.2023.

2. At the outset, we find that there is a delay of 04 days in appeal filed by the assessee, for which petition for condonation

of delay along with reasons for delay has been filed. After considering the petition filed by the assessee and also hearing both the parties, we find that there is a reasonable cause for the assessee in not filing appeal on or before the due date prescribed under the law and thus, in the interests of justice, we condone delay in filing of appeal and admit appeal filed by the assessee for adjudication.

3. The brief facts are that, the assessee M/s. Shree Adinath EPC Ventures Pvt Ltd., engaged in the business of construction allied and ancillary activities, filed its original return of income for the assessment year 02-11-2017, declaring total income of Rs.29,10,730/-. The return was processed u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The case was selected for complete scrutiny through CASS and notices u/s. 143(2) and 142(1) of the Act were issued, calling for requisite details. In response, the assessee filed submissions and documents through e-proceeding. The Id.AO verified the e-filings and made disallowance u/s. 40(a)(ia) of Rs.43,28,927/- and difference in Form 26AS at Rs. 4,58,53,944/- and concluded the assessment u/s. 143(3) of the

Act on 30.12.2019. Aggrieved, the assessee filed an appeal before the Id. CIT(A).

4. The Id. CIT(A), after considering the submissions made by the assessee held that, the assessee has not effectively pursued the appellate proceedings and failed to respond to various notices issued. The Id.CIT(A) also relied upon the following judgments:

(i) CIT vs B.N. Bhattacharya reported ar 118 ITR 461

(ii) M/s. Chemipol vs Union of India (Central Excise Appeal No 62 of 2009) Mumbai HC

(iii) Dr. P. NallaThampy vs Shankar [1994] (supp) SCC 63 (SC)

(iv) Whirlpool of India Ltd vs DCIT in ITR No. 2006/Del/2011, ITAT Delhi

(v) CIT vs Gold Leaf Capital Corporation Ltd in ITA No. 798 of 2009 Delhi HC

5. The Id. CIT(A) relying on above decisions held that inspite of sufficient opportunities, the appellant did not responded and submitted any reply. Therefore, the Id. CIT(A) upheld the order of the Id.AO. Aggrieved by the order of the Id. CIT(A), the assessee preferred an appeal before us.

6. The Ld. Counsel for the assessee, stated that the Id. CIT(A) and the Assessing Officer erred in disposing the appeal without providing adequate opportunity to the appellant.

7. Per contra, the Id. DR has opposed the plea of assessee to remit back the case to the Id. CIT(A) as the Id. DR does not want us to give one more innings to the assessee.

8. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that assessee is engaged in the business of construction allied and ancillary activities and due to non-participation before the CIT(A) by the assessee and hence, the exparte order has been passed by the First Appellate Authority. The plea of the assessee was that the non-appearance/participation was not deliberate and the Id. AR undertakes to appear before the authorities, provided an opportunity is given. Since, exparte order has been passed, we deem it fit to restore the issue back to the Id. CIT(A), since there is violation of natural justice and non-compliance of sub-section (6) of section 250 of the Act and direct the CIT(A) to adjudicate the issue, after providing reasonable opportunity to the assessee. Needless to say,

assessee to be diligent and is given liberty to file written submissions and relevant documents if advised to do so during the appellate proceedings and the Id. CIT(A) to pass speaking order in accordance to law.

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

Order pronounced in the open court on 29th May, 2024 at Chennai.

Sd/-
(एबी टी वर्की)
(ABY T VARKEY)
न्यायिक सदस्य/**Judicial Member**

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 29th May, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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