

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JM AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.643/Chny/2024
निर्धारण वर्ष /Assessment Year: 2014-15

Mahesh Jain
No.55, Narayana Mudali Street,
Sowcarpet, Chennai.
[PAN-AAFPJ3370D)

DCIT,
Vs. **Corporate Cicle-2(1)**
Chennai-34

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by
प्रत्यर्थी की ओर से /Revenue by

: Shri Darpan Kumar
: Shri P.Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 21.05.2024

घोषणा की तारीख /Date of Pronouncement

: 31.05.2024

आदेश / O R D E R

PER AMITABH SHUKLA, A.M :

This appeal arises from order vide DIN / order No. ITBA/NFAC/S/250/2023-24/1059397610 dated 05.01.2024 of the CIT(Appeal)/NFAC whereby the appeal of the assessee was dismissed on account of non-prosecution of appeal by the assessee.

2.0 At the outset the Ld.AR argued that there existed genuine and sufficient grounds with the assessee which contributed to making proper representation and submission before the Ld.CIT(A).

3.0 It was also submitted that the matter be restored back to the file of the CIT(A) for fresh adjudication and that the assessee assures that full compliance shall be made during appellate proceedings.

4.0 Brief facts of the case are that the appellant is an individual and has been assessed to tax for over two decades under PAN-AAFPJ3370D. The appellant had filed his Return of Income for the Assessment Year 2014-15 on 27/11/2014 admitting a loss of Rs.68,18,658/-. The said Return was processed under section 143(1) of the Income Tax Act 1961. The case was subsequently taken up for scrutiny under CASS and a notice u/s 143 (2) of the Act dated 29/08/2015 was issued on the appellant. After hearing the appellant's authorized representative, the Assessing Officer proceeded to complete the assessment by his order dated 31/12/2016 determining the appellant's total loss at Rs. 53,56,054/-. The case again was subsequently reopened u/s 147 of the Income Tax Act as the Assessing Officer was of the opinion that the income had escaped assessment on the presumption that the appellant had received a sum of Rs.2,80,73,000/- on revaluation of the assets of the firm in which he was a partner. The Assessing Officer passed an order dated 24/10/2019 u/s

143(3) r.w.s. 147 of the IT Act, 1961 served on the appellant on 02/11/2019 wherein the Assessing Officer had assessed the balance in Capital Account of the appellant on account of revaluation of assets of Rs.2,80,73,000/- as Business income after holding it as in the character of windfall profit or non-compete fee. The assessee was a partner in a firm by name, M/s. PRIME ONE. The said firm in which he was a partner was not dissolved on the date of his retirement and that the firm continued as such with remaining partners. The closing credit balance of Rs.3,96,25,000/- standing in the capital account was received by the assessee on his retirement from the firm. This amount was only the credit balance lying in his account which was capital in nature and not liable to tax. However, the Assessing Officer held that the said credit balance in the Appellants Capital Account received from the firm is in the nature of income. In appeal the Ld.CIT(A) dismissed the assessee's appeal for want of prosecution.

5.0 The Ld. DR contested the submissions of the assessee arguing that the assessee did not have a justifiable reason for non-compliance and accordingly relied upon the order of the Ld.CIT(A).

6.0 It is seen from records that there is delay of 6 days in filing of this appeal. Application for condonation of delay has been filed. The assessee has submitted through an affidavit that the delay of 6 days has

accord as is authorized representative was annual an account of pre-occupation and being indisposed.

7.0 It has been submitted that the said delay was neither willful nor wanton. Evidences brought on record allude that there is sufficient force in the assessee's arguments. The delay in filing the appeal is therefore condoned and the appeal is being adjudicated as under.

8.0 At the outset the assessee submitted that the Ld.CIT(A) has dismissed assessee's appeal on account of non-compliance to his notices. The assessee requested that the matter be restored to Ld.CIT(A) for fresh adjudication and assured that it shall make all compliances to the notices issued by the Appellate Authority.

9.0 We have heard the rival submissions in the light of facts of the case and material available on records. On perusal of the order it is seen that the Ld.CIT(A) has dismissed assessee's appeal for non-compliance and proceeded to confirm the additions made by the AO. Facts of the case indicates that the assessee has not been able to present its case before the Ld.CIT(A). Accordingly, after considering various facets of the case we deem it fit to restore the matter to the file of the Ld.CIT(A) for fresh adjudication and to readjudicate the matter after considering material brought on records and as per law. The assessee is directed to make full compliance to all the notices issued by the Ld.CIT(A).

9.0 In the result the appeal is partly allowed.

Order pronounced on 31st May, 2024.

Sd/-

**(ABY T. VARKEY)
Judicial Member**

Sd/-

**(AMITABH SHUKLA)
Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 31st May, 2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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