

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 12/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2017-18

**M/s. Vetrivel Pandian
Builders,**
No.40, 41, 13th Street,
Nanganallur,
Chennai – 600 061.

The Income Tax Officer,
Vs. Non-Corporate Ward 14(4),
Chennai.

PAN: AAGFV 3214P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Ms. T.V. Muthu Abirami, Advocate
: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 05.06.2024

घोषणा की तारीख/Date of Pronouncement

: 05.06.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

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/250/2022-23/1043553511 (1) dated 24.06.2022. The assessment was framed by the Income Tax Officer, Non-Corporate Ward 14(4), Chennai for

the assessment year 2017-18 u/s.144 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 25.09.2019.

2. At the outset, it is noticed that the appeal of assessee is time barred by limitation 497 days. The facts are that as per Form 36, the assessee pointed out that the order of CIT(A)-NFAC dated 24.06.2022 was served on assessee or received by assessee on 24.06.2022. The Id.counsel for the assessee pointed out that the appeal should have been filed on or before 23.08.2022 but actually it was filed only on 03.01.2024, thereby there is a delay of 497 days. Now, the Id.counsel for the assessee drew our attention to petition for condonation of delay, wherein it was submitted that the assessee received some text messages (SMS) from Income-tax Department and was not aware of passing of the order of CIT(A) and knowledge came to it only in end of November or early December, 2023, when it received some text messages for penalty, etc. When it was checked, the assessee immediately came to know and take steps for filing of appeal. The assessee explained the delay in following para of its condonation petition as under:-

“It is submitted that in the end of November / early December 2023, the Petitioner received some text messages (SMS) from the Income Tax Department about a few notices being issued to it and that it must visit the portal to check the same. The Petitioner had immediately forwarded those messages to its Chartered Accountant, CA M.Aparna, who, on logging into

the Petitioner's income tax web portal, found that the appellate order in respect of the quantum appeal had been passed in the Petitioner's case on 24.06.2022. She further informed the Petitioner that the SMS that it received pertained to the Show Cause Notices for penalty proceeding. She enquired the Petitioner whether it received any emails / SMS from the department regarding hearing notices for appeal proceedings. The Petitioner informed her that it did not receive any notice and was not aware of the order passed by the National Faceless Appeal Centre pertaining to the quantum appeal.

It is submitted that the Petitioner immediately sought the advice of its Chartered Accountant CA M.Aparna, who guided the Petitioner about the legal processes and the implication of the order that was passed against it by the Income Tax Department. The Petitioner approached Smt.T.V.Muthu Abirami, Advocate along with CA M.Aparna, Chartered Accountant and the case was explained to Smt.V.Muthu Abirami, Advocate and the Petitioner sought her opinion on the case. Smt.T. V.Muthu Abirami, Advocate, after going through the Petitioner's file, opined that the orders of the Commissioner of Income Tax (Appeals) can be assailed by way of an appeal before the Hon'ble Income Tax Appellate Tribunal.”

With these words confronted, the Id.counsel stressed on the submissions. On the other hand, the Id. Senior DR, opposed the condonation of delay.

2.1 Having heard rival contentions and going through the reasons stated in the condonation petition, we are of the view that there is reasonable cause and delay is attributable only to the reasonable cause being transitional period of manual to Information Technology. Hence, we condone the delay and admit the appeal.

3. The Id.counsel for the assessee stated that the order of CIT(A)-NFAC is ex-parte and even the assessment is ex-parte. The only issue in this appeal of assessee before CIT(A) was bank deposits of Rs.1,92,16,283/- assed by AO as unexplained credit u/s.69 of the Act. The Id.counsel stated that the CIT(A)-NFAC has not adjudicated the issue and simpliciter decided for non-prosecution of appeal and that also ex-parte. The Id.counsel pointed out para 5.2 of CIT(A)-NFAC order, which reads as under:-

“5.2 I have considered the facts and circumstances of the case, the observations of the AO and material available on record on the above mer. As mentioned in paragraph 5 of this appeal order, this office has issued several letters to file written submission, However, neither any adjournment was sought for nor any written submission was filed. The letters were issued through ITBA System at the mailID provided by the appellant. From the above conduct of the appellant, it is evident that the appellant is no more interested in pursuing the appeal. Hon'ble Supreme Court in the case of CIT Vs B.N. Bhattacharjee and others [1979] 10 CTR 354 (SC) observed that preferring an appeal, means effectively pursuing it. Hon'ble M.P. High Court in the case of Estate of Late Tukojirao Holkar Vs CWT [1979] 223 ITR 480 (M.P.) dismissed the reference filed at the instance of the assessee for default and for not taking necessary steps. Considering the conduct of the assessee in the present circumstance, I am of the view that the assessee is not interested in pursuing the appeal. This view has been affirmed by Hon'ble ITAT Ahmedabad in case of Amitkumar H.Shah Vs. ACIT in ITA No. 2985/Ahd/2010 vide their order dated 31.12.2013, wherein following the order of ITAT Delhi Bench in the case of CIT Vs Multiplan India Pvt. Ltd., [1991] 38 ITD 320 (Del), ITAT has dismissed the appeal filed by the assessee for want of persuasion. Under these circumstances, the current appeal of the appellant is liable to be dismissed.”

The Id.counsel also pointed out that the AO has not at all examined the assessee's reply and source of deposit. However, it was pointed

out that once the CIT(A)-NFAC has not at all adjudicated the issue, the matter has to be restored back.

4. On the other hand, the Id.CIT-DR vehemently contested the arguments of Id.counsel for the assessee.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the order of CIT(A)-NFAC is ex-parte despite few of notices, the assessee has not complied with. But the CIT(A)-NFAC also proceeded ex-parte for non-prosecution only. There is no decision on merits. Hence, we are inclined to set aside the order of CIT(A)-NFAC and direct him to pass a speaking order on merits after allowing reasonable opportunity of being heard to the assessee. In term of the above, we set aside the order of CIT(A)-NFAC but for non-appearance by assessee or non-filing of details before AO and before CIT(A)-NFAC, we are imposing cost of Rs.25,000/- to be paid to Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras. The assessee will pay the cost of Rs.25,000/- to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras and produce the receipt before the CIT(A). In term of the above, the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal filed by the assessee in ITA No.12/CHNY/2024 is allowed for statistical purposes.

Order pronounced in the open court at the time of hearing on 5th June, 2024 at Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 5th June, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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