

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

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुकला, लेखा सदस्य के समक्ष  
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER  
आयकर अपील सं./ITA Nos.355/Chny/2024  
निर्धारण वर्ष /Assessment Years: 2017-18

Durairaj Vijay  
New No.12, Old No.13/1, Varadharaja  
Perumal Koil Street, Tondiarpet,  
Chennai-81  
[PAN: AAFPV9623H]

ITO, Non-Corp  
Ward-6(4)Chennai

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri S.L.Janardhanan, FCA

प्रत्यर्थी की ओर से /Respondent by

: Shri ARV Srinivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 29.05.2024

घोषणा की तारीख /Date of Pronouncement

: 12.06.2024

**आदेश / ORDER**

**PER AMITABH SHUKLA, A.M :**

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2023-24/ 1058766161(1) dated 14.12.2023 of NFAC. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 14.12.2023 passed by NFAC.

2.0 Brief factual matrix of the case is that the assessee had filed his return of income for A.Y, 2017-18 on 17/05/2018 declaring total income at Rs.5,20,190/-. The case was selected for scrutiny under CASS and

:- 2 -:

accordingly, notice u/s. 143(2) of the Act was issued and served upon the assessee. The AO passed an order u/s. 143(3) of the Act by making following additions / disallowance to the total income of the assessee.

S.No.	Particulars	Amount
1.	Disallowance of Expenses claimed in P & L A/c.	Rs.3,40,425/-
2.	Unexplained investments u/s. 69	Rs.13903712/-
3.	Disallowance of deduction claimed under chapter-VIA	Rs.1,50,000/-

3.0 The AO thus determined taxable income of the assessee at Rs.1,49,14,327/- against return income of Rs.5,20,190/-. The assessee preferred an appeal before the first appellate authority who dismissed the same, inter-alia, observing as under:-

*“...4.1.5 In the instant case, there was a delay of 1147 days. The appellant admitted that he had received the order u/s 143(3) on 25.12.2019. The appellant also submitted he had consulted his counsel who had advised him for filing appeal however the appeal was filed on 16.03.2013, which has a delay of more than 3 years. No specific reason for delay in filing of appeal was submitted. The appellant just stated the facts that there is a delay. The reason stated by the appellant in Form 35 is that "delay in filing the appeal is because of a genuine belief of the applicability of a particular provision of the Income Tax Act 1962 which was not accepted by the Original Authority". If the appellant was of the belief that no additions should be made then it should have filed appeal within the time allowed after receipt of the order. The appellant had accepted that he had received the order. What the appellant is saying is that he was just*

*contemplating the assessment order received by him. This can neither be a sufficient cause nor can it be construed as reasonable cause. It shows laxity on the part of the appellant was the reason for delay in filing appeal. It appears that the appellant had nothing to say regarding delay in filing of appeal or even had any sufficient reasons for such delay...”*

4.0 The Ld.AR submitted that the Ld.CIT(A) has dismissed its appeal without condoning requested delay even though the assessee had sufficient cause, though not mentioned elaborately, for the said delay. It was submitted that the assessee had several personal problems contributing to the impugned delay. It was submitted that assessee's mother was suffering from renal failure and was undergoing prolonged treatment. The assessee reportedly lost his parents on account of Covid-19. It was further submitted that the assessee's own mental and financial health was adversely impacted in the impugned challenging times. On the issue of merits of the addition the assessee has submitted that the AO had treated loans and advances received as part of cash deposits as well as also committed a double addition. It was accordingly requested that the matter may be restored to the file of the Ld.CIT(A) for adjudicating the matter after condoning the impugned delay.

5.0 The Ld.DR vehemently opposed the submissions of the assessee. It was submitted that the arguments for delay, taken before the Ld.CIT(A) are different than those put forth now. The Ld.DR indicated that before the Ld.CIT(A), the appellant had submitted that the delay had occurred as the appellant was busy in consultation with his tax experts and hence the delay. Ld.DR also submitted that the period of personal health problems of parents, their unfortunate demise etc. do not match with the period of delay as the latter proceeded the former. The Ld.DR also argued that in terms of order of Hon'ble MP High Court in Tax appeal No.72 of 2018 dated 05.07.2022 the assessee's case for delay did not pass the test of sufficiency of reasons for the delay. The Ld.DR also urged that in case the assessee's petition admitted, some cost be imposed for deterrence value.

6.0 We have heard rival submission in the light of facts of the case and material brought on records. It is an undisputed fact of this case that delay has been caused by the assessee to file its appeal before the first appellate authority. Material available on record also indicates that the assessee has attributed different reasons for justifying its plea for condonation of delay before the first appellate authority as well as this tribunal. On its submissions qua covid-19, the assessee does not get any relief from the timeline relaxations pronounced by Hon'ble Apex Court. It is however also

*:- 5 -:*

an undisputed fact of this case that the assessee, during the period of delay, was indeed seized with unfortunate health problems of his parents as well as the shock of their demise. The principle of human probability entails that a person may get distracted, at least temporarily, from his material concerns like tax compliances when faced with critical and or adverse health issues of his / her parents. Ends of justice demand that benefit of doubt requires to be given in such cases to the aggrieved party. Accordingly, we are of the view that to do substantial justice one more opportunity be provided to the assessee to represent the true and clear facts before the Ld.CIT(A) and hence, we set aside the orders of the lower authorities i.e., the Ld.CIT(A) and remand the matter back to his file for fresh adjudication while condoning the delay of 1147 days in filing of appeal before him with a cost of Rs.5,000/- to be paid to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras on or before 15.07.2024. The assessee will pay this cost and produce the receipt before the Ld.CIT(A) during his appellate proceedings. Needless to say that the Ld.CIT(A) will allow reasonable opportunity of being heard to the assessee and assessee is also directed to represent his case as and when notice is issued, otherwise adverse view can be taken against the assessee. As we have set aside the appeal for fresh adjudication by the Ld.CIT(A), we refrain to offer any comments on the grounds concerning merits of the addition.

: - 6 - :

7.0 In the result the appeal is partly allowed for statistical purposes.

*Order pronounced on 12<sup>th</sup> June, 2024 at Chennai.*

**Sd/-**

(यस यस विश्वनेत्र रवि)

**(SS Viswanethra Ravi)**

**न्यायिक सदस्य / Judicial Member**

चेन्नई/Chennai, दिनांक/Dated: 12<sup>th</sup> June, 2024.

KB/-

**Sd/-**

(श्री अमिताभ शुक्ला)

**(Amitabh Shukla)**

**लेखा सदस्य /Accountant Member**

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