

आयकर अपीलिय 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 Nos.: 489, 490 & 491/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2016-17

**AA 294 Arulvadi Primary
Agricultural Co-op Credit
Society Ltd.,**
Arulvadi, Sathyamangalam,
Erode – 638 461.

The Income Tax Officer,
Vs. Ward 2(1),
Erode.

PAN: AACAA 1572C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Ms.A.Vijayalakshmi, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 24.06.2024

घोषणा की तारीख/Date of Pronouncement

: 24.06.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

These appeals by the assessee are arising out of the orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in ITBA/NFAC/S/250/2023-24/1059076449(1) & 1059075043 (1) both dated 26.12.2023 & ITBA/NFAC/S/250/2023-24/1059109968(1) dated 27.12.2023. The assessment was framed by the Addl./Joint/Deputy/Asst. Commissioner of Income

Tax/Income Tax Officer, National Faceless Assessment Centre, Delhi for the assessment year 2016-17 u/s.147 r.w.s. 144A r.w.s.144B of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 24.03.2022. The impugned penalty orders were passed by the Assessing Officer u/s.271A of the Act dated 23.09.2022, u/s. 271(1)(b) of the Act dated 20.09.2022, and u/s.271(1)(c) of the Act dated 29.09.2022.

2. At the outset, the Id.counsel for the assessee drew our attention to Ground No.3 raised by assessee, which is common in all the three appeals, regarding the order of CIT(A)-NFAC not condoning the delay in filing of appeals and dismissing the appeals. Since the assessee has raised common ground in all three appeals and all these three appeals are against the order of CIT(A)-NFAC dismissing the appeals as un-admitted and not condoning the delay, we are reproducing the said common ground No.3 in all the three appeals:-

3. *Reasonable cause of delay in filing Appeal with the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) failed to appreciate that the Appellant does not have qualified Accountant to attend the Income Tax Proceedings, The Appellant appoints Members of TN Accounting and Taxation Services Co-operative Society to represent the proceedings, the appeal was filed. Hence, the Appellant requested the CIT(Appeals) to allow condonation of delay and accept the appeal, without considering condonation petition appeal has been disallowed.*

3. The brief facts are that these three appeals relates to assessment year 2016-17 against the different orders of CIT(A)-NFAC confirming the action of AO levying penalties u/s.271A, 271(1)(b) & 271(1)(c) of the Act. The Id.counsel for the assessee took us through the orders of CIT(A)-NFAC and stated that all these appeals before CIT(A) were filed with a delay of 276 days against the order of AO passed u/s.271A of the Act, delay of 234 days against the order of AO passed u/s.271(1)(b) of the Act, and delay of 254 days against the order of AO passed u/s.271(1)(c) of the Act. The CIT(A)-NFAC has not condoned the delay in all the three appeals and the finding is identical in all the three appeals. The assessee before CIT(A)-NFAC contended that since the assessee does not have any proper accountant to take the responsibility to file the appeals before CIT(A) and unable to submit the details required in the appeal. It was contended that later the Member of Tamil Nadu Accounting and Taxation Services Co-operative Society was appointed to attend the Income-tax proceedings. On its appointment, the assessee came to know that the appeal was not filed before CIT(A) and even the appointment letter was filed before CIT(A)-NFAC along with condonation application filed along with appeal. Since facts are identical in all the three years, we are taking the facts from appeal filed against the penalty order u/s.271A of the

Act adjudicated by CIT(A)-NFAC in Appeal No.NFAC/2015-16/10283072. The appeal was instituted on 26.06.2023 against the penalty order passed by AO u/s.271A of the Act but the appeal should have been filed on or before 23.10.2022 and thereby there is a delay of 276 days. The CIT(A)-NFAC has negated the cause stated by assessee by observing in paras 10.7 to 10.9as under:-

10.7. This reason is not acceptable as it is the appellant's responsibility to manage his own affairs and how he does it is his concern.

10.8. The department is not responsible for his acts of omission and commission. The appellant is responsible for running his business/society and maintaining his accounts, should employ proper Accountant / consultant to take responsibility to file appeal before the Income Tax Department and submit the details required in the appeal.

10.9. The appellant cannot shift his responsibility by stating the accountant is not a qualified person to look after the proceedings forward. Hence, it appears the appellant is trying to make a weak excuse for delay in filing his appeal and it is very unconvincing as the attitude of the appellant is shifting of responsibility and accountability.

In view of this reason, the CIT(A)-NFAC has not condoned the delay and dismissed the appeal *in-limini*.

4. When these facts were confronted to Id. Senior DR that non-appointment of a proper accountant or proper counsel by the assessee due to procedural problems, the assessee could not file its appeal on time, this could be reasonable cause and even the assessee before CIT(A)-NFAC filed appointment letter of Member of

Tamil Nadu Accounting and Taxation Services Co-operative Society was appointed for filing of appeal before CIT(A). The name of the consultant was Shri R.Yuvaraj who has been appointed as consultant for direct and indirect tax matters. The Id.Senior DR could not controvert the above fact situation.

5. After hearing rival contentions and going through the reason stated by CIT(A)-NFAC for not accepting the above sufficient cause adduced by assessee during the course of hearing, we are of the view that the CIT(A)-NFAC erred in not condoning the delay for the reason that the assessee has appointed a Member of Tamil Nadu Accounting and Taxation Services Co-operative Society to file the appeal and look after the affairs of Income-tax and GST compliance to Shri R.Yuvaraj as consultant and accordingly, the appeal was filed after a delay of 276 days. Similar are the facts in other two appeals i.e., against the penalty order passed u/s.271(1)(b) & 271(1)(c) of the Act. Since the reason adduced before CIT(A) by the assessee is sufficient and reasonable, we condone the delay occurred in filing of appeals before CIT(A). Since, there is no adjudication on merits, we remit the issue back to the file of the CIT(A) to decide these three appeals on merits. In term of the above, these three orders of CIT(A)-NFAC are set aside and matter remanded back to the file of

the CIT(A) for fresh adjudication after allowing reasonable opportunity of being heard to the assessee.

6. In the result, the three appeals filed by the assessee in ITA Nos.489, 490 & 491/CHNY/2024 are allowed for statistical purposes.

Order pronounced in the open court at the time of hearing on 24th June, 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 24th June, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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