

आयकर अपीलीय 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 No.: **871/CHNY/2024**

निर्धारण वर्ष/Assessment Year: 2017-18

Shri Selvamuthu Pravinkumar,
Prop: Universal Links,
153H/56, Gandhi Nagar,
Attur,
Salem District – 636 102.

The Income Tax Officer,
Vs. Ward 1(6),
Salem.

PAN: BCNPP 4215Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri G.Akash, Advocate

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:

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/250/2023-24/1056016051 (1) dated 13.09.2023. The assessment was framed by the Income Tax Officer, Ward 1(6), Salem for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 28.12.2019.

2. At the time of hearing, it is noticed that this appeal is barred by limitation by 141 days. The facts of the case are that the order by CIT(A)-NFAC is dated 13.09.2023. As per Form 36, the assessee has received this order on 13.09.2023 and appeal should have been filed on or before 11.11.2023 but appeal was actually filed on 01.04.2024 and thereby, there is a delay of 141 days. The assessee filed affidavit for condonation of delay of 138 days stating the reason that he was sick and could not attend to his normal work diligently from October, 2023 till March, 2024 along with medical certificates. The reason given in the affidavit reads as under:-:-

“An order of Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi, dated 13-09-2023 was passed. An appeal against the same ought to have been filed on or before 11/11/2023. It is however being filed only today after delay of 138 days. Reason for the delay was that I was sick and could not attend to my normal work diligently from October 2023 till March, 2024 as confirmed by attached copy of a doctor’s certificate. There was no negligence on my part. In these circumstances it is prayed that the Hon’ble Income Tax Appellate Tribunal may kindly accept that there was sufficient cause for the delay, which may please be condoned, and the appeal admitted.

When this was put to Id. Senior DR, he could not controvert the above fact situation. After hearing rival contentions and going through the condonation petition, we find the reason stated by assessee as reasonable and sufficient and hence, we condone the delay and admit the appeal.

3. At the outset, the Id.counsel for the assessee drew our attention to Ground Nos. 1 & 2, which reads as under:-

“1. The Commissioner of Income-tax (Appeals) is not justified in dismissing the appeal, reasoning only non-compliance to three hearing notices.

2. The Commissioner of Income-tax (Appeals) ought to have discussed the Grounds of Appeals filed and decided the appeal on merits, even though appellant was not knowledgeable enough to respond to notices issued electronically.”

4. The Id.counsel for the assessee took us to the order of CIT(A)-NFAC and stated that there is no adjudication by CIT(A)-NFAC on merits at all rather he has dismissed the appeal of assessee for non-prosecution despite the fact that only three dates were fixed for hearing i.e., 31.12.2020, 04.09.2023 & 11.09.2023 and order was finally passed on 13.09.2023. The Id.counsel for the assessee stated once there is no adjudication on merits, the CIT(A)'s order cannot be sustained.

5. When these facts were confronted to Id. Senior DR, he could not controvert the above facts. After hearing rival contention and going through the fact that there is no adjudication by CIT(A)-NFAC on merits and appeal is dismissed for non-prosecution of assessee, we set aside the order of CIT(A)-NFAC and remand the matter back to his file for fresh adjudication on merits.

6. In the result, the appeal filed by the assessee in ITA No.871/CHNY/2024 is 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, Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.