

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, HON'BLE JUDICIAL MEMBE AND
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No.: **971/Chny/2024**

निर्धारणवर्ष / Assessment Year: 2017-18

Asian Health and Nutri Foods
Private Limited,
No. 959/1a, K S Road,
Sooravarikandigal,
Sirupuzhalpettai (Post),
Gummidippondi,
Chennai, Thiruvallur – 601 201

Income Tax Officer,
v. Circle -1(1),
Salem.

[PAN:AADCA-6299-D]

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. D. Anand, Advocate
प्रत्यर्थीकीओरसे/Respondent by : Shri. D. HemaBhupal, JCIT

सुनवाईकीतारीख/Date of Hearing : 24.06.2024

घोषणाकीतारीख/Date of Pronouncement : 28.06.2024

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal by the assessee is filed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2017-18, vide order dated 30.11.2023.

2. At the outset, it is noticed that the appeal filed by the assessee is barred by limitation by 71 days. The impugned

order passed by the CIT(A) dated 30.11.2023 was served on the assessee on 30.11.2023. The appeal has to be filed on or before 29.01.2024 but it was actually filed on 08.04.2024 with a delay of 71 days. The assessee has filed affidavit along with condonation petition stating the reason that the order of CIT (A) got misplaced and the orders from the website were not available due to technical errors. The Id.CIT-DR did not seriously objected to condone the delay. We find the cause as reasonable and hence, condone the delay and admit the appeal.

3. The brief facts are that the assessee is a private limited company and e-filed its return of income for the assessment year 2017-18 on 31.10.2017 admitting a loss of Rs.46,91,999/-. The case was selected for complete scrutiny under CASS and notice u/s. 143(2) of the Act was served on 25.09.2018. The Assessing Officer concluded the assessment by passing the order U/s.143(3) of the Act on 27.12.2019 by making the additions as below taxable U/s.115BBE of the Act.

1. Cash sales as unexplained - Rs.10,57,07,149/-
2. Cash deposit during demonetisation Rs. 4,31,00,000/-
3. Sundry Creditors for goods Rs. 7,16,00,000/-

4. Aggrieved by the order of the AO, assessee preferred an appeal before the Id.CIT(A) and subsequently filed petition U/s.264 before the Ld.PCIT -1, Coimbatore.

5. The Ld.PCIT has deleted the addition made in Sl.No. 2 – cash deposit and set aside the other two additions made Sl.No.1 & 3 for verification to AO, vide his order dated 13.01.2021.

6. The AO, after verification of submissions made by the Assessee passed an order U/s.143(3) r.w.s.264 on 31.03.2022 by reducing the addition to Rs.2,36,90,490/- on account of sundry creditors / trade advances and deleting the addition made an account of cash sales. Subsequently, the case was transferred to this office from National faceless penalty center with the approval of CBDT to complete the penalty proceedings. The Assessing officer passed an order of penalty on 26/09/2022 by levying penalty of Rs.1,25,62,940/- (200% of the Tax payable) U/s.270A of the Act, by rejecting the application filed by the assessee U/s.270AA, as the provisions of immunity to penalty is available only for the orders passed U/s.143(3) or 147 and not for the order passed consequent to order U/s.264 as stated in Section 270AA(1)(a) of the Act. Aggrieved by the

impugned penalty order U/s.270A of the Act, the Assessing officer preferred an appeal before the Ld.CIT (A).

7. The Id.CIT(A) had issued seven notices granting opportunities to the assessee to appear for hearing. However, the assessee had not responded. The Id.CIT(A) has dismissed the appeal of the assessee by passing an order dated 30.11.2023 by upholding the decision of levying penalty by the Assessing officer. Aggrieved by the order of the Id.CIT(A), the assessee is before us.

8. The Id.AR stated that the Id.CIT(A) has erred in dismissing the assessee's appeal exparte, is erroneous in law and prayed for remanding the matter back to the Id.CIT(A) for adjudication on merit.

9. The Id.DR did not raise any objections for the same.

10. We have heard both the parties and gone through the order of the Id.CIT(A). It is noted that the Id.CIT(A) has passed the impugned order exparte. To meet the ends of justice, we remit back the appeal to the file of the Id. CIT(A) for denovo adjudication. We direct the assessee to appear before the Id.

CIT(A) and at liberty to submit the relevant details before the Id.CIT(A) for adjudication of the case.

11. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28th June, 2024 at Chennai.

Sd/-
(मनु कुमार गिरि)
(MANU KUMAR GIRI)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(एस.आर.रघुनाथा)
(S. R. RAGHUNATHA)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 28th June, 2024

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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