

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1044/Chny/2024
निर्धारण वर्ष/Assessment Year: 2009-10

Shri S. Ramesh, Old No.56, New No.117, Sami Naicken Street, Chintadripet, Chennai – 600 002.	v.	The ACIT, NCC-9, Chennai.
[PAN: AAAPR 6313 D]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Abhishek Murali, CA
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	24.06.2024
घोषणाकीतारीख /Date of Pronouncement	:	27.06.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short 'the Ld.CIT(A)'), Delhi, dated 01.03.2024 for the Assessment Year (hereinafter in short 'AY') 2009-10.

2. The main grievance of the assessee is that the Ld.CIT(A) has passed an *ex parte* order without going into the merits of the case. According to the Ld.AR, the Ld.CIT(A) was of the opinion that there was a



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delay in filing of the appeal i.e. more than 2802 days (i.e. more than '7' years) and since assessee didn't file any condonation petition, he didn't condone the delay and dismissed the appeal. In this regard, according to him, the Ld.CIT(A) noted that the assessee has acknowledged in Form 35 that there was a delay in filing of the appeal; and the reason for delay was stated therein that the business as well as tax related issues were handled by his late father and the assessee was not aware of the assessment order passed in AY 2009-10 in this case. According to the assessee, since his father passed away he was under depression and was under medical treatment and only when he received the notice from the Tax Recovery Officer in December, 2022 that he came to know about the assessment order dated 10.03.2015; and immediately thereafter, had filed the appeal on 09.01.2023 (20 days). According to the assessee, he wouldn't gain by not filing the appeal, when there was an addition of Rs.35,31,535/-. Therefore, for the ends of justice and fair play, he prays that the delay may be condoned and matter be restored to the file of the Ld.CIT(A) for adjudication in accordance to law.

3. Per contra, the Ld.DR does not want us to give one more opportunity to the assessee, because, the assessee didn't file appeal for very long time (7 years) and since, he also participated in the assessment proceedings, it cannot be said that he wasn't aware of the outcome of the



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assessment order. We note that the impugned order of the Ld.CIT(A) is an ex parte order qua assessee without going into the merits of the case. The Ld.CIT(A) noted that there was a delay of more than '7' years in filing of the appeal and therefore, he didn't condone the delay and dismissed the appeal of the assessee.

4. We have heard both the parties and perused the material available on record. We note that the assessment order has been passed in this case on 10.03.2015 for AY 2009-10; and the assessee has filed the appeal before the Ld.CIT(A) only on 09.01.2023. Thus, there was delay of more than '7' years; and even though, the assessee has stated the reasons as noted supra, we are of the opinion that the assessee ought to have filed application for condonation of delay along with supporting documents (*medical certificate*), affidavit, etc., before the Ld.CIT(A) and prove his bonafides. And in the absence of the same, the Ld.CIT(A) has not condoned the delay. However, considering the facts stated in Form 35 as noted supra, for the ends of justice and fair play, we restore the appeal back to the file of the Ld.CIT(A) with a direction to the assessee to file condonation application along with supporting documents before the Ld.CIT(A); and the Ld.CIT(A) to consider the same, and pass order in accordance to law; and if the Ld.CIT(A) is convinced with the reasons for delay, he may condone the delay and decide the appeal on merits as



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contemplated u/s.250(6) of the Income Tax Act, 1961; and the assessee is directed to be diligent and file written submissions/relevant documents before the First Appellate Authority to substantiate its grounds of appeal and the Ld.CIT(A) after giving proper opportunity to the assessee to pass speaking order in accordance to law.

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

Order pronounced on the 27th day of June, 2024, in Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 27th June, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF