

अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

S.A. Nos. 43, 44, 45 & 46/CHNY/2024

[In ITA Nos. 2042, 2043, 2044 & 2024/CHNY/2024]

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आयकर अपील सं./**ITA Nos.:2042, 2043, 2044 & 2045/CHNY/2024**
निर्धारण वर्ष/Assessment Years: 2013-14, 2014-15, 2015-16 & 2018-19

M/s. Ponmudi Muthusamy
Gounder Trust,
67/1, Sumasamudra Illam,
Alankattupudur,
S. Periapalayam,
SircarPeriapalayam,
Tiruppur – 641 607.

The Deputy Commissioner of
Income Tax (Exemptions),
vs Coimbatore.

PAN: AAATP 5691G

(प्रार्थक / Petitioner)

(प्रत्यर्थी/Respondent)

प्रार्थक की ओर से/Petitioner by
प्रत्यर्थी की ओर से/Respondent by

: Ms. T.V. Muthu Abirami, Advocate
: Ms. R. Anita, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 23.08.2024

घोषणा की तारीख/Date of Pronouncement

: 23.08.2024

आदेश / O R D E R

PER AMITABH SHUKLA, ACCOUNTANT MEMBER:

The assessee has filed these stay petitions requesting for stay of outstanding demand for the assessment years 2013-14 to 2015-16 and 2018-19.

2. When these stay petitions were called for hearing, the Id.counsel for the assessee filed a chart containing the details of payments and stated that the assessee has made payment of 20% of the total demand. The detailed chart is reproduced as under:-

A. CHART SHOWING THE DETAILS OF THE AMOUNT PAID BY THE ASSESSEE TOWARDS THE DEMAND MADE

Assessment Year: 2013-14

Demand raised: Rs.2,54,12,050/-

Date of assessment order: 29.03.2016

Date	Challan No	Amount paid
05.08.2024	04021	Rs.4,05,769/-
05.07.2024	20043	Rs.94,920/-
07.02.2023	61572	Rs.1,58,440/-
07.07.2022	06467	Rs.94,610/-
11.05.2020	02614	Rs.1,90,230/-
05.02.2020	01136	Rs.91,611/-
21.06.2019	15797	Rs.1,39,750/-
10.01.2018	02051	Rs.25,00,000/-
10.01.2018	40498	Rs.10,00,000/-
08.12.2017	01755	Rs.5,00,000/-

Total demand paid Rs.51,77,330/- (20.37% of demand)

Assessment Year: 2014-15

Demand raised: Rs.1,25,19,620/-

Date of assessment order: 29.12.2016

Date	Challan No	Amount Paid
05.08.2024	02900	Rs.1,53,924/-
26.03.2018	42759	Rs.1,50,000/-
15.03.2018	43285	Rs.2,00,000/-
10.01.2018	40495	Rs.15,00,000/-
08.12.2017	01754	Rs.5,00,000/-

Total demand paid Rs. Rs.25,03,924/-(20% of demand)

Assessment Year: 2015-16

Demand raised: Rs.1,07,87,610/-

Date of assessment order: 28.12.2017

Date	Challan No	Amount paid
29.08.2018	01016	Rs.6,50,000/-
17.07.2018	05065	Rs.15,26,950/-

Total demand paid Rs. Rs.21,76,950/-(20.18% of demand)

Assessment Year: 2018-19

Demand raised: Rs. 56,29,389/-

Date of assessment order: 30.03.2021

<i>Date</i>	<i>Challan No</i>	<i>Amount paid</i>
05.08.2024	02944	Rs.11,25,878/-

Total demand paid Rs.11,25,878/- (20% of demand)

3. The Id.counsel for the assessee stated that since the assessee has paid 20% of the demand, balance amount be stayed. She also stated that the Department has attached its bank accounts maintained with Indian Bank & Karur Vysya Bank, Tirupur. The Id.counsel for the assessee filed list of bank accounts attached which are as follows:-

A. List of Bank Accounts attached are as follows.

Date of Attachment - 10.07.2024

<i>Name and branch of the bank</i>	<i>Account number</i>	<i>Nature of account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>6002244363</i>	<i>Current Account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>6166275622</i>	<i>Current Account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>6204402377</i>	<i>Current Account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>908163089</i>	<i>Current Account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>6194613160</i>	<i>Current Account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>950618107</i>	<i>Current Account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>0710541454</i>	<i>Current Account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>6002243472</i>	<i>Current Account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>6168713417</i>	<i>Current Account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>6215084258</i>	<i>Current Account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>6740582946</i>	<i>Current Account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>6433922690</i>	<i>Current Account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>6389527837</i>	<i>Current Account</i>
<i>Indian Bank, MSME Tirupur</i>	<i>6985742223</i>	<i>Current Account</i>
<i>KARUR VYSYA BANK Tirupur</i>	<i>1197140000000013</i>	<i>Current Account</i>
<i>KARUR VYSYA BANK Tirupur</i>	<i>1197140000000049</i>	<i>Current Account</i>
<i>KARUR VYSYA BANK Tirupur</i>	<i>1197140000000025</i>	<i>Current Account</i>
<i>KARUR VYSYA BANK Tirupur</i>	<i>1197140000000037</i>	<i>Current Account</i>
<i>KARUR VYSYA BANK Tirupur</i>	<i>1197140000000051</i>	<i>Current Account</i>

The Id.counsel for the assessee stated that the date of attachment is 10.07.2024 and in case, this attachment is not lifter, the assessee will not be able to do any business.

4. The Id.counsel for the assessee further stated that the orders of CIT(A) is ex-parte and that also for default on the part of the assessee simpliciter and there is no speaking order or there is no order on merits. At that time, the Id. Senior DR was asked whether we can take up the appeals for hearing because ultimately the appeals have to go back to CIT(A) for adjudication on merits. The Id. Senior DR pointed out that the assessee is non-cooperative and careless, as number of notices were served on assessee by the CIT(A) and even before the AO, the assessee has not filed details or in term of the some of the notice, he has not appeared even. We noted that the CIT(A) has simpliciter dismissed the appeals for default and not adjudicated or decided merits of the case. After going through the provisions of the Act particularly provision of section 250 of the Act, we are of the view that unless the statute authorizes the quasi judicial authority to dismiss the appeal for default expressly or by inevitable implication but the appellate authority has to decide the appeal on merits and not dismiss it for default. For this, we rely on the decision of Hon'ble High Court of

Madras in the case of Southern Steel Industries vs. AAC (CT), [1996] 101 STC 273 (Mad). The Id. Senior DR consented for hearing of these appeals in the given facts and circumstances.

5 We noted that the assessee is non-compliant before the lower authorities but the CIT(A) also passed the appellate order simpliciter for dismissal in default. Since the order of CIT(A) in these appeals are ex-parte, while hearing these stay petitions, we are adjudicating the appeals in ITA Nos. 2042 to 2045/CHNY/2024.

6. These appeals by the assessee in ITA Nos. 2042 to 2045/CHNY/2024 are arising out of the different orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in Order Nos.ITBA/NFAC/S/250/2024-25/1065093746 (1), 1065093892(1), 1057862068(1) & 1064049127(1) dated 24.05.2024, 24.05.2024, 10.11.2023, 12.04.2024 respectively. The assessments were framed by the Deputy Commissioner of Income Tax (Exemptions), Coimbatore for the assessment years 2013-14, 2014-15 & 2015-16 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders dated 29.03.2016, 29.12.2016 & 28.12.2017 respectively and the assessment for the assessment year 2018-19 was framed by the

Assessing Officer, National e-Assessment Centre, Delhi u/s.143(3) r.w.s.143(3A) & 143(3B) of the Act vide order dated 30.03.2021.

7. At the outset, it is noticed that these appeals by assessee in ITA Nos.2042 & 2043/CHNY/2024 are barred by limitation by 8 days, ITA No.2044/CHNY/2024 is barred by limitation by 204 days and ITA No.2045/CHNY/2024 is barred by limitation by 50 days. It is noticed from Form 36 that the order of CIT(A) dated 24.05.2024/10.11.2023/12.04.2024 were received by assessee on 24.05.2024/10.11.2023/12.04.2024 itself. But all these four appeals were filed on 31.07.2024 with a delay of 8 / 204 / 50 days. The assessee has filed condonation petition for condoning the delay along with affidavit. The assessee has stated the following common reason in its condonation petitions and requested for condonation of delay:-

“The Petitioner is a trust and for the impugned Assessment Year 2014-15, an assessment order was passed u/s. 143(3) and a demand of Rs. 1,25,19,620/- was raised and against which the Petitioner filed an appeal before the National Faceless Appeal Centre. The National Faceless Appeal Centre passed u/s.250 dated 24.05.2024. The Petitioner was not aware of the order passed by the Commissioner of Income Tax (Appeals). The appeal before the Hon'ble Income Tax Appellate Tribunal ought to have been filed on or before 23.07.2024, which is 60 days from the date of order, i.e.24.05.2024. The appeal was filed on 31.07.2024 with a delay of 8 days.

It is submitted that the Petitioner trust's employees and two consultants, to whom the Petitioner entrusted the case, failed to take note of the hearing notices that were issued by the National Faceless Appeal Centre and further failed to take note of the order u/s.250 that was passed by the

National Faceless Appeal Centre. The consultants and the employees never intimated the Petitioner trust about the hearing notices or the order u/s.250. The Managing Trustee of the Petitioner is a senior citizen aged about 76 years and he could not personally monitor the hearing notices and the order. Thereafter, the Petitioner's bank accounts were attached on 10.07.2024. The Petitioner came to know of the order passed by the National Faceless Appeal Centre u/s.250, only when the Managing Trustee contacted a new consultant as to the reason for the bank attachment. Subsequently, the consultant guided the Petitioner about the legal processes and the implication of the order passed u/s.250. The Petitioner then approached Smt.T.V.MuthuAbirami, Advocate and the Case was explained To Smt.T.V.MuthuAbirami, Advocate and the Petitioner sought her opinion on the case. Smt.T.V.MuthuAbirami, Advocate, after going through the Petitioner's file, opined that the orders of the Commissioner of Income Tax (Appeals) can be assailed by way of an appeal before the Hon'ble Income Tax Appellate Tribunal.

It is submitted that the Petitioner requested Smt.T.V.MuthuAbirami, Advocate to draft the appeal before the Hon'ble Income Tax Appellate Tribunal against the order passed by the Commissioner of Income Tax (Appeals) and file the same before the Hon'ble Income Tax Appellate Tribunal. Smt.T.V.MuthuAbirami, Advocate prepared the appeal immediately and sent it for the Petitioner's signature on 28.07.2024, so that the samne may be filed with no further delay. The Petitioner received the appeal papers on 29.07.2024 and signed it on the same day and handed over the papers back to Smt.T.V.MuthuAbirami, Advocate on 30.07.2024.

It is submitted that the appeal was finally filed on 31.07.2024 with a delay of 8 days. Because the Petitioner was not aware of the appellate order in respect of the appeal, the Petitioner had filed the appeal before this Hon'ble Income Tax Appellate Tribunal only on 31.07.2024, with a delay of 8 days.

The Petitioner was not aware of the hearing notices or the order issued passed by the National Faceless Appeal Centre. Had the Petitioner known about the notices /order, it would have represented before the first appellate authority and would have also filed the appeal on time. Only when the bank accounts held by the Petitioner were attached, the Petitioner came to know of the order passed by the first appellate authority.

It is submitted that the delay in filing the appeal is neither wilful nor wanton and only because of the reasons cited above. No prejudice would be caused to the Income Tax Department if the delay is condoned. On the other hand, irreparable injury would be caused to the appellant if the delay is not condoned.”

On the other hand, the Id.Senior DR opposed condonation of delay.

7.1 After hearing rival contentions and going through the reasons stated in the petition and arguments made by Id.counsel, we are inclined to accept the cause as reasonable and hence, condone the delay and admit the appeals.

8. As the orders of CIT(A) are ex-parte and no adjudication on merits, we are inclined to set aside these orders and remand the matters back to the file of the CIT(A) for fresh adjudication on merits subject to a condition that assessee will pay a cost of Rs.25,000/- (Rupees twenty five thousand) in each of the appeal. The assessee will pay this cost of Rs. 25,000/- in each of the appeal, to be paid to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras by the assessee within a month's time from the date of receipt of this order. The assessee will pay these costs and produce the receipts before the CIT(A). In term of the above, the matter in these four years are remanded back to the file of CIT(A) for fresh adjudication after allowing reasonable opportunity of being heard to the assessee. Accordingly, the appeals of the assessee are allowed for statistical purposes.

9. Since the assessee has paid 20% of tax demand as noted above in para 2 of this order, as requested by Id.counsel for the assessee, we direct the AO to lift the attachment and release the bank account from attachment from today itself. We direct the AO accordingly.

10. Since we have heard the appeals and decided, the Stay petitions becomes infructuous and hence, dismissed.

11. In the result, the appeals filed by the assessee in ITA Nos.2042 to 2045/CHNY/2024 are allowed for statistical purposes and the stay applications filed by the assessee in S.A Nos.43 to 46/CHNY/2024 dismissed.

Order pronounced in the open court at the time of hearing on 23rd August, 2024 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated 23rd August, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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