

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस.आर. रगुनाथा, लेखा सदस्य के समक्ष  
Before Shri S.S. Viswanethra Ravi, Judicial Member &  
Shri S.R. Raghunatha, Accountant Member

आयकर अपील सं./I.T.A. No.1412/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2012-13

Veerapandian VKP  
C/o B. Anand & Associates, No. 5,  
2<sup>nd</sup> Floor, Rama Street,  
Nungambakkam, Chennai 600 034.

Vs. The Income Tax Officer,  
Ward – 4, Nellai Citi Centre,  
Tiruchendur Road, Rahamath  
Nagar, Tirunelveli 627 011.

**[PAN: AFLPV9610D]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Anandd Babunath, FCA  
प्रत्यर्थी की ओर से/Respondent by : Ms. Gouthami Manivasagam, JCIT  
सुनवाई की तारीख/ Date of hearing : 04.09.2024  
घोषणा की तारीख /Date of Pronouncement : 11.09.2024

**आदेश /O R D E R**

**PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order dated 17.05.2023 passed by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi for the assessment year 2012-13.

2. We find that this appeal was filed with a delay of 302 days. The assessee filed petition for condonation of delay stating the reasons. Upon hearing both the parties and on examination of the said petition, we find

the reasons stated by the assessee are bonafide, which really prevented in filing the appeal in time. Thus, the delay of 302 days is condoned.

3. The assessee raised 5 grounds of appeal, amongst which, the only issue emanates for our consideration as to whether the Id. CIT(A)/NFAC is justified in confirming the order of the Assessing Officer exparte of the assessee.

3. The brief facts emanating from the records are that the assessee is an individual and filed no return of income for the year under consideration. The case of the assessee was reopened by issuing a notice under section 148 of the Income Tax Act, 1961 ["Act" in short] on an information that the assessee along with two others sold immovable property in Reddykuppam village for an amount of ₹.3,25,00,000/-. According to the Assessing Officer, the assessee neither filed return of income nor filed any objection in response to the notice under section 148 of the Act. Further, the Assessing Officer issued a pre-assessment notice to the assessee, but no objection raised in that regard. Thus, the Assessing Officer had no option but to proceed to complete best judgement assessment under section 144 of the Act determining long term capital gains applying cost index to an extent of ₹.1,50,91,074/- vide order dated 30.12.2016.

4. Aggrieved by the order of the Assessing Officer, it was stated by the Id. AR Shri Ananadd Babunath, FCA that the assessee preferred an appeal on 27.09.2018 before the Id. CIT(A) with a delay of 605 days. The said appeal was migrated to NFAC Centre vide proceedings dated 25.09.2020. The Id. CIT(A)/NFAC issued hearing notice on 07.01.2021 and 03.05.2023. According to the Id. CIT(A)/NFAC that the assessee failed to explain sufficient cause in filing the appeal with delay of 605 days and dismissed the appeal *in limine* without discussing anything on merits.

5. On being aggrieved, the assessee is in appeal before the Tribunal and raised the above said ground.

6. The Id. AR submits that no notice was received by the assessee, whereby, could not appear before the Assessing Officer as well as Id. CIT(A). He submits that the Assessing Officer computed the capital gains on incorrect manner and prayed to afford an opportunity by remanding the matter to the file of the Assessing Officer as the assessee is ready to furnish evidence to substantiate his claim.

7. The Id. DR Ms. Gouthami Manivasagam, JCIT opposed the submissions of the Id. AR in seeking remanding the matter to the file of the Assessing Officer. She submits that the Assessing Officer has given many opportunities by issuing notice under section 148 of the Act and

also pre-assessment notice. The assessee intentionally did not appear before the Assessing Officer who rightly determined the capital gains. Further, the Id. DR drew our attention to the impugned order and submits that the assessee could not avail two opportunities given by the Id. CIT(A)/NFAC, Delhi, but, the assessee did not furnish any evidence or written submissions and thus, prayed to dismiss the ground raised by the assessee.

8. Having heard both the parties, we note that admittedly, there was no response from the assessee in terms of notices issued under section 148 of the Act and also pre-assessment notice. Having no option, the Assessing Officer proceeded to complete the assessment according to best judgement under section 144 of the Act. Having aggrieved by the order of the Assessing Officer dated 30.12.2016, the assessee preferred an appeal before the Id. CIT(A) on 27.09.2018 with a delay of 605 days, wherein, it is noted that there was no response to the notices issued by the Id. CIT(A)/NFAC, which clearly shows the negligent attitude of the assessee. Coming to the arguments of the Id. AR that no notice was served on the assessee, we note that on examination of Form 35, it is observed under Column "personal information", an e-mail ID of the Id. AR was given. The Id. DR submits that there is no manual intervention in

issuing notices in ITBA portal, when command is given, notice will be raised automatically to the e-mail ID provided in the “personal information” as well as address on which notice has to be sent as stated under Col. 17 of Form 35. On perusal of the Form 35, we note that e-mail ID of the Id. AR was provided under “personal information” as well as under Col. No. 17. There is no evidence before us showing that no notice was properly served on the assessee except a statement by the Id. AR that no notices were served on the assessee. Since the assessment was completed exparte of the assessee and dismissal of the appeal in limine by the Id. CIT(A)/NFAC, in the interest of justice and taking into account the facts and circumstances of the case and submissions of the Id. AR, we deem it proper to remand the matter to the file of the Id. CIT(A) with a direction to condone the delay of 605 days subject to the payment of ₹.25,000/- in favour of the State Legal Aid Authority, Hon’ble Madras High Court within 30 days from the date of receipt of this order. The Id. CIT(A)/NFAC shall satisfy the same and pass order on merits. The assessee is at liberty file evidence to substantiate his claim. The ground raised by the assessee is allowed for statistical purposes.

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

Order pronounced on 11<sup>th</sup> September, 2024 at Chennai.

Sd/-  
(S.R. RAGHUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. VISWANETHRA RAVI)  
JUDICIAL MEMBER

Chennai, Dated, 11.09.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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