

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष  
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER  
आयकर अपील सं./ ITA No. 2242 /Chny/2024  
निर्धारण वर्ष /Assessment Years: 2012-13

Vetabayan Palani,  
No.4/216, Solakottai Village,  
Nayakkanahalli Post,  
Dharmapuri,  
Tamil Nadu-636002.  
[PAN: BRWPP7347D]

The Income Tax Officer,  
Ward-1,  
Dharmapuri

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri Kathir, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri Chinthapalli Meher Chand, JCIT

सुनवाई की तारीख/Date of Hearing

: 23.10.2024

घोषणा की तारीख /Date of Pronouncement

: 08.11.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2023-24/1054608818(1) dated 26.07.2023 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2012-13. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 26.07.2023 passed by NFAC, Delhi.

2.0 It has been noted that there is a delay of 337 days in the case, in filing of this appeal before the tribunal. In its affidavit the assessee has pleaded that he was having some medical issues and was not aware of the notices issued by the First Appellate Authority resulting in ex parte order passed u/s 250. The assessee's Chartered accountants advised him to file before this tribunal. All these activities contributed to the delay which was neither willful nor wanton. We have considered the justification put forth by the assessee and we are satisfied with their adequacy. We are also conscious of the fact that no litigant gains by intentionally delaying its own matters. The Ld. DR did not pose any serious objections. Accordingly, we hereby condone the delay and proceed to adjudicate this appeal.

3.0 At the outset the Ld. Counsel for the assessee informed that the Ld. First Appellate Authority has passed an ex-parte order thereby confirming the assessment order u/s 143(3) r.w.s. 147 dated 02.12.2019 and that the appeal was dismissed on account of non-appearance. As per the assessment order the assessee had deposited cash of Rs.20,50,000/- in his bank account and no return of income was filed. The Ld. AO noted non-compliance by the assessee to the notices u/s 148, 129, 142(1) and proceeded to complete the assessment on "Best judgement assessment" basis u/s 144 by making the addition of

impugned amount. The Ld. CIT(A) however chose to dismiss the appeal on the premise on non-appearance. The Ld. Counsel for the assessee pleaded that the assessee has been denied reasonable opportunity of being heard. It was accordingly prayed that matter may be considered for restoration to Ld. CIT(A) for fresh adjudication. The Ld. Counsel for the assessee assured that full compliance would be made now. The Ld. DR proposed that cost may be levied upon the assessee.

4.0 We have heard the rival submissions in the light of material available on records. It is trite law that no litigant benefits by non-prosecution of its case. We find sufficient force in the pleadings of the assessee, as to why it could not prosecute its case. We have also noted that apart from merely harping on the issue of non-appearance by the assessee the Ld. CIT(A) has not touched upon merits of the case. We have also noted that the Ld. AO in his order also clearly indicated that complete details were not forthcoming from the assessee. As a result of which he had to resort to ex-parte assessment. We are therefore of the view that ends of justice would be met if the assessee is given one last opportunity to present its case and file supporting evidences. Accordingly, we set aside the order of authorities below. The assessing officer is the primary authority to determine taxable income of a tax payer by collecting and collecting evidences. Accordingly, placing reliance upon the decision

in the case of TIN box 249 ITR 216 the matter is restored to the file of the AO for assessment de novo. He is directed to give due opportunities of being heard to the assessee. The assessee is directed to make complete and correct compliance towards the notices issued by the AO. Any non-compliance from the assessee side shall be adversely viewed. Accordingly, the grounds appeal raised by the assessee is allowed for statistical purposes.

5.0 In the result, the appeal raised by the assessee is allowed for statistical purposes.

Order pronounced on 8<sup>th</sup>, November-2024 at Chennai.

Sd/-

( एबी टी. वर्की )

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 8<sup>th</sup>, November-2024.

KB/-

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