

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

श्री एस एस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI S.S. VISWANETHRA RAVI, HON'BLE JUDICIAL MEMBER  
AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **2168/Chny/2024**

निर्धारण वर्ष / Assessment Year: 2013-14

M/s. Arun Excello Constructions Assistant Commissioner of  
LLP, 18 Bhattad Towers, v. Income Tax,  
West Cott Road, Non Corporate Circle -11(1),  
Royapettah, Chennai – 600 014. Chennai.

**[PAN: AAUFA-2577-J]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Mr. Shrenik Chordia, CA  
प्रत्यर्थी की ओर से/Respondent by : Ms. Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing : 23.10.2024

घोषणा की तारीख/Date of Pronouncement : 25.10.2024

**आदेश / O R D E R**

**PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 10.07.2024 and pertains to assessment year 2013-14.

2. The assessee is a LLP, filed its return of income for the A.Y. 2013-14 on 30.09.2013 admitting a total income of Rs.5,93,47,310/-. The assessee is into business activity of Civil and engineering, construction and development of Flats. The case was selected for scrutiny under CASS. The assessment was concluded u/s.143(3) on 31.03.2016 by making an addition of Rs.12,13,383/- u/s.14A of the Act. Subsequently, the case was re-opened u/s.147 of the Act, for the reason that 'an interest expenditure incurred for the purchase of shares on behalf of partners' claimed by the assessee by debiting to P & L A/c, hence, the income has escaped assessment. The AO passed an order u/s.143(3) r.w.s.147 of the Act on 28.12.2018 by disallowing the 'interest expenditure incurred for the purchase of shares on behalf of partners' of Rs.3,62,12,687/- and levied taxes accordingly. Meanwhile, assessee challenged the issue of notice u/s. 148 of the Act dated 27.10.2017 in the writ petition filed before the hon'ble High court of Madras.

3. However, the writ petition has been dismissed on 07.06.2022 with an option to the assessee to pursue the

matter in statutory appeal of all the aspects of the matter, both jurisdiction as well as merits holding as under:

*"Learned counsel for the petitioner states that pending Writ Petition, an order of assessment has come to be passed on 28.12.2018 and hence the petitioner may be permitted to withdraw this Writ Petition and pursue the matter in Statutory Appeal reserving the right of the petitioner to pursue all aspects of the matter, both jurisdiction as well as merits. He has also made an endorsement to that effect.*

*2. In view of the endorsement made, this Writ Petition is dismissed as withdrawn granting liberty to the petitioner to approach the statutory Appellate Authority by way of appeal. Such appeal, if filed within a period of two (2) weeks from today, will be entertained by the Commissioner of Income Tax (Appeals) without reference to limitation, seeing as the Writ Petition has been pending before this Court since December, 2018, but in compliance of all other requisite requirements and disposed in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed."*

4. Aggrieved by the order of the AO u/s.143(3) r.w.s.147, the assessee preferred an appeal before the Id.CIT(A), NFAC with a delay of 203 days, after the receipt of the order of the writ, wherein 2 weeks' time had been granted.

5. At the outset, the Id.AR for the assessee took us through the order of the Ld.CIT(A) in para 23, wherein the Id.CIT(A) has dismissed the appeal in-limine without condoning the delay of 203 days in filing the appeal & passed the order on 10.07.2024, holding as under :

*"23.0 In view of the above, I am not satisfied that the assessee had "sufficient cause" for not presenting the appeal within the due date stipulated u/s.249(2)(b) of the Act. Accordingly, this is not a fit case to condone the delay in filing the appeal as envisaged u/s.249(3) of the Act and, therefore, the appeal cannot be admitted. Thus, the appeal is **dismissed in limine, as not admitted.**"*

Aggrieved by the order of the Id.CIT(A), the assessee preferred an appeal before us.

6. The Id.AR for the assessee submitted that the assessee is a LLP and having a business of Civil and engineering, construction and development of Flats and had filed an appeal before the Ld.CIT(A) with a delay of 203 days, after the dismissal of the writ petition filed by challenging the notice U/s.148 of the Act, before the Hon'ble High court of Madras. The Ld.AR stated that, the assessee had filed the condonation petition before the Id.CIT(A), but the same has been rejected by the Ld.CIT(A) as not satisfied with the reasonable and sufficient cause explained. The Ld.AR prayed to remand the matter to the file of CIT(A) with a direction to condone the delay and adjudicate the issue on merits.

7. Per contra, the Id.DR relied on the order of Ld.CIT(A), which has been dismissed without condoning the delay in filing

the appeal on or before 2 weeks' time provided in the order of hon'ble High court of Madras and prayed for dismissing the appeal of the assessee.

8. We have heard the rival contentions and gone through the materials available on record and orders of the authorities below. The re-assessment order was passed on 31.12.2018 by the AO by disallowing the 'interest expenditure incurred for the purchase of shares on behalf of partners' of Rs.3,62,12,687/- and levied taxes. The assessee had challenged the issue of notice u/s.148 of the Act dated 27.10.2017 in the writ petition filed before the hon'ble High court of Madras. However, the writ petition has been dismissed on 07.06.2022 with an option to the assessee to pursue the matter in statutory appeal of all the aspects of the matter, both jurisdiction as well as on merits, if filed within a period of 2 weeks from 07.06.2022, will be entertained by the CIT(A) without reference to the limitation. We note that, the assessee filed an appeal before the Ld.CIT(A) with a delay of 203 days, which has not been condoned u/s.249(3) of the Act, stating that the reason for delay explained by the assessee is not sufficient and reasonable cause. In the facts and

circumstances of the case, we are of the considered view that, in the interest of justice and fair play we deem it fit to direct the CIT(A) to condone the delay in filing the appeal and adjudicate the appeal denovo in accordance to law, after providing reasonable opportunity to the assessee. Needless to say, assessee to be diligent and file written submissions and relevant documents if advised so.

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

Order pronounced in the court on 25<sup>th</sup> October, 2024 at Chennai.

**Sd/-**  
(एस एस विश्वनेत्र रवि)  
**(S.S. VISWANETHRA RAVI)**  
न्यायिक सदस्य/**Judicial Member**

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

चेन्नई/Chennai,

दिनांक/Dated, the 25<sup>th</sup> October, 2024

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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