

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकरअपील सं./ ITA No.1372/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2013-2014)

Akshya Infrastructure Private Limited,
57/2B, Sai Subhodhaya Apartment
ECR Road,
Tiruvanmayur,
Chennai 600 041.

Vs. The Income Tax Officer,
Ward 1,
Puducherry.

[PAN: AAHCA 6944K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Dr. R. Mohan Reddy, IRS, CIT.

सुनवाई की तारीख/Date of Hearing

: 17.10.2024

घोषणा की तारीख /Date of Pronouncement

: 23.10.2024

आदेश / ORDER

PER MANU KUMAR GIRI (Judicial Member)

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)- Puducherry in ITA No.130/CIT(A)-PDY/2017-2018, dated 25.03.2019. The assessment was framed by the Income Tax Officer, Ward 1, Pondicherry for the assessment year 2013-14 u/s.144 of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 21.03.2016.

2. At the outset, it is noticed that the appeal filed by the assessee is barred by limitation by 1649 days. The order of CIT(A) dated 25.03.2019 was communicated to the assessee on 25.03.2019 itself as per Form 36. The appeal has to be filed on or before 24.05.2019 but was filed only on 30.01.2023. The assessee moved a petition for condonation of delay in filing the appeal wherein the assessee has given the reasons for delay as under: -

'The appeal against the impugned order is filed belatedly by 1649 days and the delay in filing the appeal is neither willful nor deliberate but due to the circumstances beyond the control of the appellant / assessee.

The appellant initially filed the appeal manually on 28.04.2016 even after the introduction of mandatory e-filing with effect from 01.03.2016 and subsequently an e-appeal was uploaded vide Acknowledgement No. 569876411231216 on 23.12.2016.

Thereafter, the manual appeal filed was rightly dismissed by the First Appellate Authority vide order dated 31.01.2017 and after getting the dismissal order relating to the manually filed appeal, the appellant pursued the e-appeal filed earlier which was purely guided by the in-house consultant Mr.SK Mohanty.

After dismissal of the appeal manually filed on 31.01.2017, the issue on hand is further complicated by virtue of the above mentioned consultant filing another e-appeal on 22.01.2018 vide Acknowledgement No. 370969101220118 by overlooking the e-appeal filed on 23.12.2016. The said e-appeal was filed on the wrong understanding of the entire gamut of facts, which is established through the fact of the uploading of dismissal order referred to herein before passed by the First Appellate Authority dated 31.01.2017 as the impugned order in Form No. 35 dated 22.01.2018.

This complex situation was detected only in the month of November, 2023 and thereafter, the appeal against the appellate order dated 25.03.2019 in rejecting the e-filed first appeal (date of filing 23.12.2016) was prepared and filed in the office of the counsel on record.

The appellant, based on the professional advice, the said appeal was filed belatedly on 28.11.2023, despite the complexities in facing the pendency of another e-appeal filed on 22.01.2018 as stated herein before / preceding paragraph.

In such circumstances, the mistake of the consultant would constitute reasonable cause for accepting the plea for condoning the delay of 1649 days for adjudicating the issues on merits. In fact, the additions made in the ex- parte assessment order are completely as well as factually erroneous, as the relevant documents were not placed before them for the reasons beyond the Petitioner / Appellant's control for verification, which itself proves the bonafides of the

appellant in pleading for entertaining the present belated appeal in the interest of justice.

Accordingly, it is prayed for condonation of delay in filing the appeal arising out of the impugned order dated 25.03.2019 for the assessment year: 2013 -14 for adjudication of the issues on merits and thus render justice”.

The assessee also filed affidavit of tax consultant of petitioner Sujit Kumar Mohanty and affidavit of N. Shivkumar Director of the Company separately affirming the reasons as stated in the petition for condonation of delay in filing the appeal.

3. Assessee, to demonstrate the reasons as stated in petition for condonation of delay in filing the appeal, filed dates and events chart as under: -

<i>Sl.No</i>	<i>Date</i>	<i>Event</i>
<i>1</i>	<i>21.03.2016</i>	<i>Assessment Order passed u/s 144 of the Act</i>
<i>2</i>	<i>01.03.2016</i>	<i>Effective date for mandatory filing of electronic appeals</i>
<i>3</i>	<i>28.04.2016</i>	<i>Filing of Manual appeal before the CIT (Appeals), Puducherry</i>
<i>4</i>	<i>23.12.2016</i>	<i>Filing of 1st electronic appeal vide Ack No. 569876411231216</i>
<i>5</i>	<i>31.01.2017</i>	<i>Order disposing off the manual appeal as non-est.</i>
<i>6</i>	<i>22.01.2018</i>	<i>Filing of 2nd electronic appeal / (Duplicate appeal) vide Ack No. 370969101220118</i>
<i>7</i>	<i>25.03.2019</i>	<i>Order disposing off the 1st electronic appeal / Impugned order</i>
<i>8</i>	<i>10.07.2023</i>	<i>Latest notice issued in the pending 2nd electronic appeal (Duplicate appeal)</i>

4. Having gone through the reasons which are of technical breach and as

evident from the chart coupled with being the first year of mandatory filing of electronic appeals which culminated into the confused state of mind which caused enormous delay, Although the delay is enormous but we find it sufficient reason. Hence, considering the period of delay and reasons stated petition for condonation of delay in filing the appeal and affidavits, we condone the delay and admit the appeal for adjudication.

5. The Assessee company filed its return of income for the AY 2013-14 admitting a total loss of Rs.4,09,47,643/-. The AO completed ex-parte assessment u/s 144 of the Income Tax Act, 1961 ('Act' in short) and made various additions viz; disallowance of liabilities, disallowance u/s 40(a)(ia) and disallowance of interest. Aggrieved assessee preferred an appeal before the Id.CIT(A), who dismissed the appeal of assessee on merits, although assessee failed to appear before the Id.CIT(A) despite three notices. Assessee is in further appeal before us.

6. At the outset, Ld. Counsel for the appellant submitted that Ld. CIT(A) had not properly followed the principles of natural justice in true spirit. Ld.CIT(A) issued three notices which were inadvertently not received by the assessee. Ld. Counsel for the appellant further prayed that if an adequate opportunity of hearing is given before Id.AO, assessee will prosecute the case properly. Ld.CIT-DR relied upon the order of Id.CIT(A) and prayed for dismissal of appeal.

7. We have gone through the orders of lower authorities and submissions addressed by the parties before us. We are of the considered view that in the

interest of justice assessee should be given one more opportunity before Id. AO to prosecute his case as assessment is also ex-parte passed u/s 144 of the Act. Therefore, in the light of aforesaid factual position we deem it fit to set aside this appeal to the file of Id. AO to do denovo assessment subject to cost of Rs.5000/- which shall be deposited by the assessee within 30 days from the date of receipt of this order to 'Tamil Nadu State Legal Services Authority' at Hon'ble High Court of Madras. The proof of the same will be furnished by the Assessee before Ld. AO whose shall proceed for denovo assessment after providing proper opportunity of hearing to the assessee. The assessee is directed to substantiate its case forthwith without any fail, failing which Ld. AO shall be at liberty to proceed with the assessment as per law.

8. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23rd day of October, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)
(**MANOJ KUMAR AGGARWAL**)

लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai:

दिनांक Dated : 23-10-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

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

Sd/-

(मनु कुमार गिरि)
(**MANU KUMAR GIRI**)

न्यायिक सदस्य / **JUDICIAL MEMBER**