

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

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2778 /Chny/2024
निर्धारण वर्ष /Assessment Year: 2017-18

Senthilkumar,
No.41/D4, Mudipoondar Nagar, Vs.
Aranthangi Main Road,
Pattukottai,
Tamil Nadu-641601
[PAN: ARPPS6436G]

The Income Tax Officer,
Ward-1,
Thanjavur.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by : Shri G.Akash, Advocate
प्रत्यर्थी की ओर से / Revenue by : Ms.V.Asathy, JCIT
सुनवाई की तारीख/Date of Hearing : 18.12.2024
घोषणा की तारीख /Date of Pronouncement : 23.12.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/APL/S/250/2024-25/1066440699(1) dated 05.07.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), for the assessment years 2017-18. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 05.07.2024 passed by Addl/JCIT(A), Kanpur.

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2.0 It has been noted that there is a delay of 57 days in the case, in filing of this appeal before the tribunal. In its affidavit the assessee submitted that he is not very conversant with electronic working. The hearing notices were issued on old auditor's Email ID as result of which the assessee remained ignorant of notices issued by the Ld. CIT(A). It was only when the TRO had approached assessee for recovery, he learnt of ex-parte order of CIT(A). All these factors contributed to the delay in filing of the present appeal which was neither willful nor wanton. The assessee submitted that there will not be case of any non-compliance now. We have considered the justification put forth by the assessee and we are satisfied with their adequacy albeit partly. We have also noted that the assessee was provided many opportunities by both the lower authorities, but assessee did not avail the opportunities alluding towards an intentional defiance. The Ld. DR urged that the delay may be condoned upon imposition of cost to be paid by the assessee for wasting the precious time of the court. In the interest of natural justice, we are of the view that to do substantial justice one more opportunity be provided to the assessee to represent the true and clear facts for adjudication of his appeal. The delay of 57 days is therefore condoned and we proceed to adjudicate this appeal.

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3.0 Coming to the factual matrix of the case, the Ld. Counsel for the assessee informed that both the lower authorities have passed ex-part orders on account of inadequate representation by the assessee. The issues at hand are regarding additions of Rs.6,24,110/- on account of estimated business income from undisclosed business turnover and of Rs.5,76,000/- on account of cash deposits by SBNs during the demonetization period. According to Ld. AO the assessee had neither responded to notice u/s 143(2) nor uploaded his books of accounts, depriving former of any adequate investigation. The issues concerning undisclosed business turnover and cash deposits by SBNs during the demonetization period were noted by the Ld. AO through departmental sources. The Ld. CIT(A) confirmed the assessment order again on account of continued non-compliance by the assessee to his statutory notices.

4.0 We have heard the rival submission in the light of material available on records. We have noted that inadequate submission of details and evidences, before the lower authorities qua sources of cash deposits in assessee's bank account during demonetization period and lack of any submissions for business turnover etc lies at the core of the controversy. Before us the Ld.Counsel for the assessee pleaded that

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one last opportunity be accorded to present its case before the Ld.AO. The Ld. DR relied upon the order of lower authorities and insisted for levy of costs upon the assessee. It is seen that the assessing officer is the primary authority under the income tax act to examine facts of a case in the light of available evidences before determining correct taxable income of a tax payer. 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 all supporting evidences before the Ld.AO. We therefore set aside the order of lower authorities on this issue and we direct the Ld. AO to readjudicate the matter de novo by examining the matter afresh in accordance with law and by passing a speaking order subject to the assessee paying a cost of Rs.5000/- to be paid to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras on or before 21.02.2025. The assessee will pay this cost and produce the receipt before the AO. Reliance for reference to the Ld.AO is placed upon the decision of Hon'ble Apex Court in the case of TIN box 249 ITR 216. The Ld. AO shall give opportunities of being heard to the assessee and it shall be bound upon the assessee to comply with the notices issued by the Ld. AO. Any non-compliance on the part of the assessee can be adversely viewed. Accordingly, all the grounds of appeal raised by the assessee on this issue are allowed for statistical purposes.

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5.0 In the result, the appeal of the assessee is allowed for statistical purposes

Order pronounced on 23rd, December-2024 at Chennai

Sd/-
(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 23rd, December-2024.

KB/-

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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