

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

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष  
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER  
आयकर अपील सं./ITA No.2929/Chny/2024  
निर्धारण वर्ष /Assessment Years: 2017-18

Vediappan Selvam Mohan,  
No.1746, Kamarajar Nagar, Thanipadi,  
Tiruvannamalai, Thanipadi S.O,  
Tamil Nadu-608708.  
[PAN: BOVPM0856C]

Income Tax Officer,  
Ward-2,  
Tiruvannamalai,  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Shri Girish Kumar, Advocate

प्रत्यर्थी की ओर से /Revenue by

: Ms.Anitha, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 22.01.2025

घोषणा की तारीख /Date of Pronouncement

: 07.02.2025

**आदेश / ORDER**

**PER AMITABH SHUKLA, A.M :**

This appeal is filed by the assessee against the order bearing DIN & Order No.ITBA/NFAC/S/250/2023-24/1053782797(1) dated 19.06.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2017-18. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 19.06.2024 passed by NFAC, Delhi.

2.0 It has been noted that there is a delay of 456 days in the case, in filing of this appeal before the tribunal. In its affidavit the assessee has pleaded that the assessee has been suffering from health complications

and was therefore dependent upon his accountant who failed to act timely in statutory compliances leading to a fall out. The assessee learnt of departments orders upon initiation of recovery proceedings. All these activities contributed to the delay 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. 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 to the delay. Accordingly, we hereby condone the delay and proceed to adjudicate this appeal.

3.0 At the outset, the Ld. Counsel for the assessee submitted that both the lower authorities the Ld.AO as well as Ld.CIT(A) has passed ex-parte orders in case of the assessee engaged in the activity of paddy and rice business. It was submitted that the only issue under consideration is an addition of Rs.12,23,000/- made on account of unexplained cash deposits in assessee's bank account for which no explanation could be offered. The Ld. Counsel for the assessee submitted that both the Ld. AO and the Ld. First Appellate Authority have passed ex-parte orders without giving sufficient opportunity of being heard. It was accordingly pleaded that in the interest of justice the matter may be restored back to the file of the Ld.AO for re-adjudication. The assessee has assured that it shall make full compliance to the statutory notices issued by the Ld.CIT(A).

The Ld. DR would like to make us believe on the correctness of the order of lower authorities. It was submitted that the assessee has not responded to notices sent by the twin statutory authorities and therefore no case of any relief is made out. The Ld. DR submitted that in the event of remitting the case back to the Ld. CIT(A), cost be imposed upon the assessee for wasting the precious time of statutory authorities.

4.0 We have heard rival submissions in the light of material available on records. As per facts recorded by the Ld. AO in his order, he had given opportunities to the assessee for filing the required details which were not satisfactorily filed by the assessee leading to his making the impugned addition. We have however noted that the order passed by the Ld. AO is not a speaking order and clear facts have not been brought on records before making the impugned addition. Before the Ld. First Appellate Authority also the conduct of the assessee was far from satisfactory as far as compliance to statutory notices are concerned leading to dismissal of the appeal for want of adequate prosecution by the assessee. The order of the Ld. CIT(A) is also based upon only the misconduct of the assessee of non-compliance.

5.0 We have noted that in the present appeal the conduct of the assessee before both the lower authorities comprising the Ld. AO and the Ld. CIT(A) has been far from satisfactory, compelling them to pass ex parte orders. 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 filed 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. The Ld. AO shall give opportunities of being heard to the assessee and it shall be bounden 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. The decision to remit it back to the Ld. AO is taken in view of the fact that an Assessing Officer is the fulcrum of assessment proceedings. He possess the first right and responsibilities to examine facts of a case before arriving at his decision qua determination of taxable income in a particular case. We have noted with respectful deference the decision of Hon'ble Apex Court in the case of TIN box 249 ITR 216 on the subject matter. We however also find force in the argument of the Ld. DR that assessee's repeated non-compliance has indeed caused loss of precious time of the statutory authorities. Consequently, the decision to remit the matter to the Ld. CIT(A) is however subject to payment of cost of Rs.5000/- by the assessee to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras within 30 days of the receipt of this order. **Accordingly, all the grounds of appeal raised by the assessee are allowed for statistical purposes.**

6.0 In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced on 7<sup>th</sup>, February-2025 at Chennai.

Sd/-

(यस यस विश्वनेत्र रवि)

(SS VISWANETHRA RAVI)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 7<sup>th</sup>, February-2025 .

KB/-

Sd/-

(श्री अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

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