

आयकर अपीलिय अधिकरण, 'बी'न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' 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.2368/Chny/2024  
निर्धारण वर्ष /Assessment Years: 2018-19

ATS Elgi Limited,  
No.S2/A-11, Private Industrial Estate,  
Pollachi Main Road, Kurichy,  
Coimbatore,  
Tamil Nadu-641024.  
[PAN: AAGCA2220F]

Deputy Commissioner of Income Tax,  
Corporate Circle-1,  
Coimbatore

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Ms.N.V.Lakshmi, Advocate

प्रत्यर्थी की ओर से /Revenue by

: Shri Keerthi Narayanan, JCIT

सुनवाई की तारीख/Date of Hearing

: 24.12.2024

घोषणा की तारीख /Date of Pronouncement

: 12.02.2025

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2024-25/1065876751(1) dated 20.06.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2018-19. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 20.06.2024 passed by NFAC, Delhi.

2.0 It has been noted that there is a delay of 22 days in the case, in filing of this appeal before the tribunal. In its affidavit the assessee has pleaded that the assessee had entrusted the work of filing the appeal to his

employee who had misconstrued the time limits for filing the appeal as well as time consumed in knowing the exact penalty demand to be contested. 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 The Ld. Counsel for the assessee submitted that the only issue seminal to the controversy is the action of the Ld. AO in levying the penalty u/s 270A of Rs.41,48,710/- for under reporting of income. The Ld. AO had levied the penalty with respect to assessee's claim of deduction u/s 35(2AB) of the act. The Ld. AO had noted that the assessee had claimed excess deduction u/s. 35(2AB) as against actual R&D expenses eligible for enhanced deduction as certified the DSIR. The Ld. Counsel submitted that the assessee had reiterated before the Ld. CIT(A) that assessee had filed progress of R&D activity as per annexure IV of DSIR guidelines and was awaiting the approval in Form 3CL which was not furnished, by DSIR, electronically to the income tax

authorities. The assessee had argued that the DSIR had instead provided the same to appellant in Form 3CL on 19.01.2021. The Id. Counsel submitted that given the contemporaneous Covid-19 pandemic it could not respond to Ld.AO's show cause notice for disallowance u/s 35(2AB). The assessee submitted that soon upon restriction in actual R&D expenditure made by the DSIR, the assessee had paid the additional tax and interest liability of Rs. 21.22 lakhs on 22.03.2021. The assessee thus argued that at the time of filing return it did not have correct figures for its claim but had immediately on learning the same through DSIR had paid the additional tax and interest. The Ld. Counsel submitted that therefore no blame of under reporting of income can be placed on its shoulders. The Ld. CIT(A) however did not concur with the explanation of the assessee on the premise that satisfactory explanation for making higher deduction u/s 35(2AB) was not available.

4.0 We have heard rival submissions in the light of material available on records. We have noted that the assessee has submitted that its initial claim u/s 35(2AB) were immediately modified and taxes plus interest paid soon upon new figures were available from DSIR. Consequently, the assessee has premised that no blame for making a wrong claim the rested upon it. We have noted that the lower authorities have not brought on record any evidence so as to allude that submissions

are fallacious or to attach any malafide intent to it. The penalty can only be imposed when a presumption qua a malafide intent is established. Accordingly, we are of the view that there is no case for imposing any penalty upon the assessee. **The order of lower authorities is therefore set aside and all the grounds of appeal raised by the assessee are allowed.**

5.0. In the result, the appeal of the assessee is allowed.

Order pronounced on 12<sup>th</sup>, February-2025 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: 12<sup>th</sup>, February-2025.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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