

आयकर अपीलीय अधिकरण, "ए" न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' 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. 3065/Chny/2024, Assessment Years: 2015-16

आयकर अपील सं./ITA No. 3066/Chny/2024, Assessment Years: 2015-16

St. Antonys Convent,
Thalavadi,
Tamil Nadu-689 572.
[PAN: AAKTS4830N]

Asst. Commissioner of Income Tax,
Exemptions Ward,
Coimbatore.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Mr. Girish Kumar, Advocate,

प्रत्यर्थी की ओर से /Revenue by

: Mr.R.Raghupathy, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 18.02.2025

घोषणा की तारीख /Date of Pronouncement

: 21.02.2025

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed by the assessee against the order bearing DIN
& Order No.ITBA/NFAC/S/250/2024-25/1067640084(1) and
No.ITBA/NFAC/S/250/2024-25/1067633842(1) dated 14.08.2024 of the
Learned Commissioner of Income Tax [herein after "CIT(A), National
Faceless Appeal Center[NFAC], Delhi, for the assessment years 2015-
16. Through the aforesaid appeal the assessee has challenged order u/s
250 dated 14.08.2024 passed by NFAC, Delhi.

2.0 The twin appeals are for quantum assessment as well as corresponding penalty and hence adjudicated together by this common order for the purposes of convenience.

3.0 It has been noted that there is a delay of 32 days in both the appeals, in filing before the tribunal. In its affidavit the assessee has pleaded that the assessee is an Hospital Institution in remote area. The Emails communication sent to the appellant could not be noticed by the Sisters of the Convent running the hospital. 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.

4.0 At the outset, as regards **ITA No. 3066/Chny/2024, Assessment Years: 2015-16** is concerned 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 trust engaged in the activity of running a hospital. It was submitted that the only issue under consideration is an addition of Rs.59,52,000 on account of cash deposits and Rs. 20 lakhs on account of time deposits in the bank. The Ld. Counsel for the assessee submitted that the Ld.First Appellate Authority has also confirmed the addition by passing an ex-parte order 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 Ld.AO for readjudication. The Ld. Counsel assured that full compliance would now be made to the statutory notices. The Ld. DR would like to make us believe on the correctness of the order of lower authorities. It was however simultaneously pleaded that costs be imposed upon the appellant for wasting the time of the Bench.

5.0 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. There are also

indications of no enquiries conducted by the Ld.AO. 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.

5.1 We have thus noted that inadequate submission of details and evidences, before the lower authorities qua sources of deposits in assessee's bank account lies at the core of the controversy. 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. The assessing officer is the primary authority under the income tax act to be examine facts of a case in the light of available evidences before determining correct taxable income of a tax payer. 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. Reliance in this regard 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 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. We however 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. AO is however subject to payment of cost of Rs.5,000/- 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 on this issue are allowed for statistical purposes.**

6.0 As regards ITA No. 3065/Chny/2024, Assessment Years: 2015-16 is concerned, we have noted that the same is in respect of penalty u/s 271(1)(c) imposed qua quantum addition made in ITA No. 3066/Chny/2024, Assessment Years: 2015-16 supra. As the impugned assessment order has been set aside to the Ld. AO for assessment de novo, the penalty u/s 271(1)(c) does not survive. The Ld. AO would be at liberty to consider invocation of any penalty proceedings, in accordance with law, after assessing the income of the assessee de novo supra. This decision is however subject to payment of cost of Rs.5,000/- by the assessee to the Tamil Nadu State Legal Service 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 on this issue are allowed for statistical purposes.

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

8.0 In the result, the appeals of the assessee vide ITA No. 3065/Chny/2024, Assessment Years: 2015-16 and ITA No. 3066/Chny/2024, Assessment Years: 2015-16 are allowed for statistical purposes.

Order pronounced on 21st, 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: 21st, February-2025.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- 1. अपीलार्थी/Assessee:**
- 2. प्रत्यर्थी/Revenue**
- 3. आयकर आयुक्त/CIT - Coimbatore**
- 4. विभागीय प्रतिनिधि/DR**
- 5. गार्ड फाईल/GF**