

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. 3073/Chny/2024
निर्धारण वर्ष /Assessment Years: 2017-18

Murali,
No.4/2, Villalar Kovil Sannathi Street,
Mayiladuthurai.
Tamil Nadu 609 001.
[PAN: BGTPM2496L]

Income Tax Officer
Ward-2
Kumbakonam.

(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/250/2023-24/1057899745(1) dated 13.11.2023 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 13.11.2023 passed by NFAC, Delhi.

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2.0 It has been noted that there is a delay of 307 days in the appeals, in filing before the tribunal. In its affidavit the assessee has pleaded that the assessee is an illiterate person and was totally dependent on his Chartered Accountant for attendance to its tax matters. It was urged that the said Chartered Accountant could not act timely leading to the delay which was neither willful nor wanton. The assessee assured 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 is engaged in the activity of whole sale business of consumer goods. It was submitted that the only issue under consideration is an addition of Rs.16,54,000/- u/s 69 of the Act. 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

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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.

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. 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. We are however 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

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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 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 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. AO is subject to payment of cost of Rs.10,000/- 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.**

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5.0 In the result appeal of the assessee is 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 - Madurai**
- 4. विभागीय प्रतिनिधि/DR**
- 5. गार्ड फाईल/GF**