

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' 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.2119 & 2120/Chny/2025, Assessment Years: 2011-12

Ramasami Gounder Mani,
No.1/39, Reddiyar Street, Siluvampatty
Post,
Namakkal,
Tamil Nadu-637 003.
[PAN: ASRPM8932A]

Income Tax Officer,
Ward-2,
Namakkal.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by : Mr.T.S.Lakshmi Venkatraman, FCA
प्रत्यर्थी की ओर से /Revenue by : Mr.saujanya Ranjan, IRS
सुनवाई की तारीख/Date of Hearing : 24.09.2025
घोषणा की तारीख /Date of Pronouncement : 26.09.2025

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

The below mentioned appeals have been filed by the appellant Assessee for AY-2011-12 contesting the order of Ld. First Appellate Authority indicated Column-E, herein below:-

S. No.	Appeal Nos.	AYs	Appellant	CIT(A) Order Details	Respondent
A	B	C	D	E	F
1	ITA No. 2119 / Chny / 2025	2011-12	Ramasami Gounder Mani, No.1/39, Reddiyar Street, Siluvampatty Post, Namakkal, Tamil Nadu-637 003. [PAN: ASRPM8932A]	DIN & Order No.ITBA / NFAC / S / 250 / 2023-24 / 1058995166(1) dated 22.12.2023	Income Tax Officer, Ward-2, Namakkal.
2	ITA No. 2120 / Chny / 2025	2011-12		DIN & Order No.ITBA / NFAC / S / 250 / 2023-24 / 1058995147(1) dated 22.12.2023	

2.0 Both the appeals being ITA 2119 / Chny / 2025 and ITA 2120 / Chny / 2025 belong to the same assessee and have been raised contesting the quantum and penalty addition respectively. Accordingly, both the appeals were heard together and are being adjudicated by this common order.

3.0 It has been noted that there is a delay of 518 days in both the appeals vide ITA 2119 / Chny / 2025 and ITA 2120 / Chny / 2025 respectively in filing of this appeal before the tribunal. In its affidavit the assessee has pleaded that the assessee is person of advanced age of 66 years and is not fairly conversant with the digital communications. It has been submitted that the assessee was dependent for electronic communications on its Chartered Accountant who did not inform the assessee timely. For the same reason delay was committed before the Ld.CIT(A) as well as before this tribunal. It was contended that the assessee learnt of the appellate orders only when it received recovery orders u/s 221 from the department. It was also submitted that absence of real time alert in the Income Tax Portal also contributed to timely non-conveyance of the order. 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 save that cost be imposed for wasting the precious time of the court. Accordingly, we hereby condone the delay and proceed to adjudicate this appeal.

4.0 At the outset the Ld. Counsel for the assessee informed that the Ld. First Appellate Authority has passed an ex-parte order thereby confirming the ex-parte assessment order u/s 144 dated 26.12.2018 and that the appeal was dismissed for being filed late without any justified grounds. It was pleaded that the assessee had committed delay of 331 days and for which it had justified grounds. It was stated that the assessee is in senior citizen who is not conversant with electronic assessment. He was totally dependent upon his professional Chartered Account who did not tender adequate support. The Ld. Counsel submitted the matter may be restored to Ld. AO for readjudication on its merits and that it shall make full compliance to the notices of Ld. AO. The Ld.Counsel for the assessee extended personal assurance of complying with the statutory notices issued by lower authorities.

5.0 Per contra, the Ld.DR relied upon the order of lower authorities.

6.0 We have heard rival submissions in the light of material available on records. We have noted that no compliance was made by the assessee before the Ld.AO as a result of which he proceeded to pass

best judgement assessment order. The Ld.CIT(A) noted that there was a delay in filing of the appeal. In Form-35 the assessee had contended that delay condonation petition would be filed at the time of the hearing. The Ld.First Appellate Authority has recorded that no such petition was filed. There was no compliance to any statutory notice issued by the Ld.CIT(A). Before us the Ld.Counsel has vehemently pleaded that because of his advance age, health issues and inept understanding of electronic assessment, delay / non-compliance was committed before the lower authorities. It was accordingly requested that one last opportunity be given to defend its case. We have noted that the Ld.AO has made addition of Rs.69,74,950/- on account of unexplained cash deposit in assessee's bank account. The order was passed u/s 144 r.w.s. 147 of the Act. Be that as it may be, we are of the view that the matter concerning cash deposits received by the assessee in its bank accounts have not been objectively and comprehensively analyzed by the lower authorities. We are 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. 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. Without

prejudice it has also been noted that in this case the Ld. AO did not have adequate opportunities to examine the varied facts seminal therein. 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. Accordingly, the issue of addition made by the Ld. AO amounting to Rs. 69,74,950/- which have been contested by the assessee through grounds of appeal stands remitted back to the Ld. AO for fresh adjudication de novo by passing a speaking order. To the extent the order of lower authorities on this issue stands set aside. 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 assessee is at liberty to produce all the evidences in support of its claims before the Ld. AO during the readjudication proceedings. This order is however subject to payment of cost of Rs.20,000/- (Twenty thousand only) 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 therefore allowed for statistical purposes.

7.0 In the result, appeal of the assessee 2119 / Chny / 2025 is allowed for statistical purposes.

8.0 Through ITA No.2120/ Chny / 2025 the assessee had challenged imposition of penalty u/s 271(1)(c) vide order dated 14.06.2019. The impugned penalty has arisen qua order u/s 144 dated 26.12.2018 which has been , in terms of decision in ITA No. 2119 / Chny / 2025, set aside and restored back to the Ld.AO for assessment de novo. The impugned penalty order dated 14.06.2019 is resting upon order u/s 144 dated 26.12.2018. It is trite law that when the foundation goes the superstructure also goes. Accordingly, the penalty order u/s 271(1)(c) vide order dated 14.06.2019 is also set aside and the Ld.AO is directed to reconsider imposition thereof after deciding the quantum as in ITA No. 2119 / Chny / 2025 supra. Accordingly, all the grounds of appeal raised by the assessee in ITA No.2120 supra are also allowed for statistical purposes.

9.0 In the result, appeal of the assessee 2120 / Chny / 2025 is allowed for statistical purposes.

8.0 In the result, the appeals of the assessee are decided as under:-

ITA Nos	Assessment Year	Result
ITA No. 2119 / Chny / 2025	2011-12	Allowed for Statistical Purposes
ITA No. 2120 / Chny / 2025	2011-12	Allowed for Statistical Purposes

Order pronounced on 26th , Sept-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: 26th , Sept-2025.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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