

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1101/Mds/2015
निर्धारण वर्ष /Assessment Year: 2009-10

M/s.S.Selvaraj,
Murthy Cotton Waste Company,
No.278, Sabapathipuram,
Tiruppur-641 601.

Vs. The Income Tax Officer,
Ward-I (1), Tiruppur.

[PAN: AHFPS 3964 D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr.A.S.Sriraman, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Mr.Shiva Srinivas, JCIT
सुनवाई की तारीख/Date of Hearing	:	09.01.2017
घोषणा की तारीख /Date of Pronouncement	:	31.01.2017

आदेश / ORDER

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the Order dated 12.01.2015 of Commissioner of Income Tax (Appeals)-3, Coimbatore, in ITA No.476/14-15 for the AY 2009-10.

2.0 All the grounds of the appeal are related to the imposition of penalty by the Assessing Officer (hereinafter referred to as 'AO') for an amount of Rs.10,70,845/- u/s.271(1)(c) of the Income Tax Act. During the assessment proceedings, the AO found that the assessee made deposits in savings bank account of the assessee with ICICI, Tiruppur Branch aggregating to Rs.31,24,279/- in cash and cheque. The assessee did not furnish the details and evidences for nature and the source of the deposits. Therefore, the AO made the addition of Rs. 31,24,279/- u/s.69 of Income Tax Act and initiated penalty u/s.271(1)(c). The assessee went on appeal before the Learned Commissioner of Income Tax(Appeals) [hereinafter referred to as 'Ld.CIT(A)'] and the Ld.CIT(A) confirmed the addition made by the AO. Subsequently, the AO also levied penalty u/s 271(1)(c) of income tax act and the Ld.CIT(A) confirmed the penalty Order. The assessee filed appeal before this Tribunal against the quantum order as well as the penalty order and the ITAT 'B' Bench in ITA No.1380 & 1381 dated 08.08.2014 remitted the matter back to the file of the Ld.CIT(A) since the Ld.CIT(A) had passed the **ex-parte** Orders and directed the Ld.CIT(A) to give opportunity to the assessee and decide the matters a fresh.

3.0 In the second round also, the Ld.CIT(A) decided the Penalty appeal on 12.01.2015 **ex-parte**. The Ld.CIT(A) confirmed the penalty imposed by the AO. The Ld.CIT(A) in Para No.7 stated that the case was posted for hearing on 09.10.2011 and 28.10.2011 and there was no response

from the assessee. In the grounds of the appeal before us, the assessee stated that the first hearing notice was issued with wrong PAN and the assessment year, hence the assessee did not attend the hearing. In the second hearing notice which was served on the assessee on 18.10.2014, posting the case for hearing on 28/10/2014, the assessee was admitted in the hospital and due to holidays, he has requested the Ld.CIT(A) for adjournment of case to November through letter to the Office of the CIT(A) on 30.10.2014. But, the Office of CIT(A) refused to accept the letter and the appeal was decided **ex-parte**. The Ld.AR argued that the CIT(A) decided the appeal against the assessee without giving reasonable opportunity. Therefore, the assessee requested for one more opportunity and to remit his case before the Ld.CIT(A). On the other hand, the Learned Departmental Representative [hereinafter referred to as 'Ld.DR'] argued that the case was posted by Ld.CIT(A) on 09.10.2014 and the assessee did not appear on flimsy ground of wrong PAN, etc. Instead of avoiding and non-cooperating with the CIT(A), the assessee should have appeared before the Ld.CIT(A) and corrected the mistake if any and cooperated with the Department. In the second instance, though the notice was served on 18.10.2014, the assessee did not responded to the notice. In spite of directions from the ITAT, the assessee continued his non-cooperation. Therefore, the Ld.DR contended that no useful purpose will be served if the matter is remitted again and requested to be confirm the penalty imposed.

4.0 We heard the rival submissions and perused the material placed on record.

It is clear from the Order of the Ld.CIT(A) that though two opportunities were given to the assessee, he did not appear and submit his Explanation before the Ld.CIT(A). When the notice was served on assessee fixing the case for hearing, it is the duty of the assessee to comply with the notice and bring the defects if any to the notice of the authorities concerned for correction. In the second instance also the assessee did not explain the reasons for failure with tangible evidence. Therefore, we are unable to appreciate the reasons given by the assessee for non-appearance in spite of specific directions from this Tribunal to co-operate with the Department. However, in this case, the issue is related to **ex-parte** order confirming the penalty imposed u/s.271(1)(c). It was submitted before us by the Ld.AR that the assessee has already made the payment of taxes with regard to quantum addition. Therefore, we are of the opinion that one more opportunity should be given to the assessee in the interest of the justice and the assessee is directed to co-operate with the CIT(A) to be submit necessary evidences, Explanations before the Ld.CIT(A) for disposing of the appeal. Accordingly, the matter is remitted back to the file of the Ld. CIT (A) to decide the matter afresh on merits after hearing the assessee.

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

Order pronounced in the Open Court on 31st January, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31st January, 2017.

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आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF