

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **2186, 2187, 2188, 2189 &
2190/CHNY/2024**

निर्धारण वर्ष/Assessment Years: 2016-17, 2018-19, 2019-20, 2020-21
& 2021-22

**M/s. Medavakkam Vattara
Nadargalikkiya Sangam,**
No.2/11, Perumbakkam Main
Road, Perumbakkam,
Chennai – 600 100.

The Income Tax Officer,
Vs. Non-Corporate Ward-22(1),
Tambaram.

PAN: AAFAM 5345Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R. Venkata Raman, CA &
Shri K. Vishva Padmanbhan, CA
प्रत्यर्थी की ओर से/Respondent by : Smt. R. Anita, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 21.10.2024
घोषणा की तारीख/Date of Pronouncement : 21.10.2024

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These appeals by the assessee are arising out of different orders of the Commissioner of Income Tax, Appeal, Addl/JCIT(A)-4, Delhi in Order Nos. ITBA/APL/S/250/2024-25/1065898299 (1), 1065898037(1), 1065896834(1), 1065897322(1) & 1065897668(1)

dated 21.06.2024. The returns of income were processed by the Centralized Processing Center, Bengaluru, u/s.143(1) of the Income Tax Act, 1961 (hereinafter the 'Act') for the assessment years 2016-17, 2018-19 to 2021-22 vide orders of different dates 01.03.2019 / 30.12.2020 / 11.05.2020 / 30.11.2021 / 23.08.2022.

2. The only common issue in these five appeals of assessee is as regards to the different orders of Addl./JCIT, Delhi in not condoning the delay and also dismissing the appeal for non-prosecution simpliciter. The facts and circumstances and also grounds raised in these five appeals are exactly identical and hence, we will take the facts & grounds from ITA No.2186/CHNY/2024 for assessment year 2016-17 and will adjudicate the issue. The relevant grounds raised by assessee read as under:-

2. That the Ld.ADDL/JCIT(A) is not justified in not condoning the delay in filing of the appeal by the appellant in spite of the fact that the appellant was prevented by reasonable and sufficient cause in delay filing of the appeal.

3. That the Ld.ADDL/JCIT(A) consequently erred in dismissing the appeal of the appellant.

4. That the Ld.ADDL/JCIT(A) is not justified in upholding the intimation dated 01.03.2019 passed by the CPC, Bangalore u/s.143(1) of the Act determining the total income of the appellant at Rs.3,51,970/- and raising a demand of Rs.1,55,970/-

3. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the delay before CIT(A) in this appeal was of 1694 days (similar are delays in other assessment years appeals of the assessee but with some difference of the days), as noted by CIT(A) and he has not condone the delay for the reason that the assessee is failed to explain reasonable and sufficient cause for delay in filing of this appeal. The JCIT observed that in para 6.2 & 6.3 as under:-

6.2. In the instant case, the appellant failed to explain any reasonable and sufficient cause of delay in filing of appeal. The language used in section 249(3) is "sufficient cause" and not "reasonable cause". 'Sufficient cause' is much more stringent than the term 'reasonable cause' and even if a cause is reasonable, it has to be ascertained whether it was a sufficient cause or not. The cause given by the appellant is very general and unverifiable. If this kind of reason is accepted, then anyone can take this plea. It has already been discussed above that for qualifying u/s 249(3) for condonation of delay, the appellant must show that he was diligent all along with taking appropriate steps and if he appears to be guilty of lapses or negligence, then he must be prepared to have his remedy barred without expecting condonation.

6.3. On the basis of the circumstances of the case, it is held that the appellant was not having "sufficient cause" for delay in filing appeal. The appeal filed by the appellant is held to be invalid and non-maintainable being out of time.

The main grievance of the assessee is that the CIT(A) apart from dismissing the appeal in limine and not maintainable, dismissed the appeal for non-prosecution by observing in para 6.4 as under:-

6.4. *In light of the above details of non-compliance and non-pursuance of appeal, reference is made to the following judicial ruling of the Hon'ble Apex Court. In CIT vs. B.N. Bhattacharya(1977) 118 ITR 461 (SC), the Hon'ble Supreme Court while dealing with the issue of pursuing of appeal has stated that "preferring an appeal means more than formally filing it but effectively pursuing it". The Hon'ble ITAT, Delhi, in CIT vs. Multiplan India Pvt Ltd., as reported in 38 ITD320 (Delhi), when faced with a similar situation of non-pursuing of appeal dismissed the appeal of Revenue. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in the following maxim- "vigilantibus non dormientibus jura subveniunt" In view of the above, it is clear that the appellant is not interested in pursuing this appeal.*

4. We noted that the CIT(A) has noted the fact that the assessee has not submitted any petition as reasonable and sufficient cause requesting for condonation of delay in filing of these appeals. We observe that the condonation of delay should not be dismissed summarily for the reason that the appeal filed belatedly is not accompanied by condonation petition. The provisions of condonation under Income-tax Act are para material to Rule 3A of Code of Civil Procedure, 1908 and Order 41 very categorically states that there is no rule prescribed for rejection of memorandum of appeal in a case where the appeal is not accompanied by an application for condoning the delay. If the memorandum of appeal is filed in such appeal without accompanying application to condone appeal, the consequence cannot be fatal. The court cannot regard such appeal as no valid presentation of appeal. In turn, it means if the appellant subsequently files an application to condone the delay is rejected,

the same should be taken up along with the already filed memorandum of appeal, only then the courts can treat as lawfully presented. There is nothing wrong, if the courts return the memorandum of appeal as defective and such defect can be cured by the party concerned and present the appeal without further delay. The Rule 3A(1) of Order 41 of CPC employees the word 'shall' means that rule cannot be interpreted very harshly and make the non-compliance punitive to an appellant. It can happen that due to some mistake or lapse, the appellant may omit to file the application explaining delay along with the appeal. In the present case, the CIT(A) noted the pristine Maxim "*vigilantibus non dormientibus jura subveniunt*" which means, law assists those who are vigilant and not those who sleep over their rights. But even a vigilant litigant is prone to commit mistakes. This aspect has been considered by the Hon'ble Supreme Court in the case of State of Madhya Pradesh vs. Pradeep Kumar, reported in (2000) 7 SCC 372 wherein it is held that "*to err is human' is more a practical notion of human behavior than an abstract philosophy, the judicature permanently closed before him. The effort of the court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed by*

him, but to see whether it is possible to entertain his grievance if it is genuine.”

4.1 We noted that in the present case before us, CIT(A)-NFAC has simpliciter dismissed the appeal for default and not adjudicated or decided merits of the case. After going through the provisions of the Act particularly provision of section 250 of the Act, we are of the view that the CIT(A) is a quasi judicial authority and in the statute of Income Tax Act, CIT(A) cannot dismiss the appeal for default expressly or by inevitable implication, but the appellate authority has to decide the appeal on merits. The appellate authority has no jurisdiction to dismiss the appeal for default but he is bound to decide the appeal on merits even in the absence of the assessee. We further noted that, this view has been taken by the Hon'ble High Court of Madras in the case of Southern Steel Industries vs. AAC (CT), [1996] 101 STC 273 (Mad). Hence, dismissal for default by CIT(A) is bad in law and accordingly, we set aside the order of CIT(A). In term of the above, the order of CIT(A) is set aside and matter remanded back to his file for fresh adjudication. Needles to say that CIT(A), after allowing reasonable opportunity of being heard to the assessee,

will decide the issue of delay first and in case delay is condoned, he will decide merits of appeals. We order accordingly.

5. In the result, the appeals filed by the assessee in ITA Nos.2186 to 2190/CHNY/2024 are allowed for statistical purposes.

Order pronounced in the open court at the time of hearing on 21st October, 2024 at Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 21stOctober, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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