

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

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 976/CHNY/2025

निर्धारण वर्ष/Assessment Year: 2018-19

**Shri Subramaniyam
Kulandhaivel,**
No.7/51, Vadugapalayam,
Mavureddipatti Post,
Tiruchengode,
Namakkal – 637 212.

The Income Tax Officer,
Vs. Ward 1,
Namakkal.

PAN: AZNPK 3744M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri T.S.Lakshmi Venkatraman, FCA
प्रत्यर्थी की ओर से/Respondent by : Shri Kumar Chandan, JCIT

सुनवाई की तारीख/Date of Hearing : 18.06.2025

घोषणा की तारीख/Date of Pronouncement : 23.06.2025

आदेश /O R D E R

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal filed at the instance of the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 09.12.2024 passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2018-19.

2. At the time of hearing, the Ld. AR for the assessee submitted that the Registry has issued defect notice on the ground that assessee had paid appeal fees of Rs.500/- only instead of Rs.10,000/-. The Ld.AR submitted that the appeal was dismissed *in limine* by the FAA only on the ground of delay in filing appeal and not on merits. Therefore, as per Ld. AR, the fees as per clause (d) of Section 253(6) of the Act was only Rs.500/-. He placed reliance on the decision of Chennai Bench of the Tribunal in the case of Aasife Biriyani Pvt. Ltd., vs. ITO in ITA No.2460/Chny/2024 (order dated 10.12.2024) and pleaded to admit the appeal of the assessee.

3. We find that the issue of deficit appeal fees is squarely covered in favour of the assessee by the decision of the Chennai Bench of the Tribunal in the case of Aasife Biriyani Pvt. Ltd., *supra* wherein it is held as under:-

3. We find that the issue deficit appeal fees is squarely covered in favour of the assessee by the decision of the Co-ordinate Bench of the Tribunal in the case of Anil Kumar Ohja (supra) which held as under:-

“2. We find that there is a letter filed by the assessee whereby he objected to a notice from the Registry regarding short payment of fees. Ld. counsel for the assessee submitted that the appeal was dismissed by the CIT(Appeals) only on the ground of non-appearance and not on merits. Therefore, as per the assessee, the fees as per clause (d) of Section 253(6) of Income-tax Act, 1961 (in short 'the Act') was only 500/-. In support, learned counsel has filed a decision of Hon'ble Karnataka High Court in the case of Rajakamal Polymers (P) Ltd. v. CIT (291 ITR 314) and also a decision of Hon'ble Patna High Court in the case of Dr. Ajith Kumar

Pandey v. ITAT (310 ITR 195). 3. We find that CIT(Appeals) had dismissed the assessee's appeal for nonprosecution and had not considered the issue on merits. In our opinion, in such a situation, the fees paid has to be as per clause (d) of Section 253(6) of the Act. The assessee has rightly paid the sum of 500/- as stipulated in the said clause of the Act. In the case of Rajakamal Polymers (P) Ltd. (supra), Hon'ble Karnataka High Court had held that when an appeal was rejected by the CIT(Appeals) on the ground of limitation, the fee payable for further appeal before this Tribunal, was only 500/- under clause (d) of Section 253(6) of the Act. In our opinion, there is not much difference between an order of CIT(Appeals) which is not on merits, but dismissing an appeal whether on account of limitation or on account of non-appearance of the parties. In this view of the matter, we admit the appeal of the assessee”.

4. Respectfully following the co-ordinate bench decision, we admit the appeal of the assessee for adjudication and overruled the objection of the Registry. We also perused the affidavit of director of Company and the reasons, we condone the delay of 19 days in filing the appeal and admit the appeal for adjudication.”

4. In light of the aforesaid order of the Tribunal, there is no defect in appeal fee paid and accordingly, we admit the appeal for adjudication.

5. There is a delay of 34 days in filing this appeal. The assessee has filed affidavit for condonation of delay stating therein the reasons for belated filing of this appeal. The reasons stated in the affidavit for belated filing are as follows:-

“4. I was engaged in the business rigs operations and held up in north India during the appeal proceedings with the CIT(Appeals). For the purpose of compliance with appeal I have authorized Mr.Ponnusamy who is a friend of mine. The above said person was unable to follow up and

communicate the order of First appellate authority dated 09.12.2024. Later at second week of March after my return to my native place, I had personally met my chartered Accountant CA T.S.Lakshmivenkataraman to inquire the status of the appeal. On knowing the order of First appellate Authority, the above Chartered Accountant opined that an appeal has to be filed with Income Tax Appellate Tribunal, Chennai Benches immediately. As per the instructions provided, the appeal with the Income Tax Appellate Tribunal has been filed on 03.04.2025.

5. The belated filing of the appeal is neither willful nor wanton.

6. Apart from the above factors the concept of "Real Time alert" is not available in the National Faceless Appeal Scheme. The above concept has not been inducted into the National Faceless Appeal Scheme, 2023 and hence neither the appellant nor his authorized representative had been served with any notices vide email or to their mobile."

6. On perusal of the same, we find there is sufficient reason for delay in filing this appeal before the Tribunal. Hence, we condone the delay in filing the appeal and proceed to dispose off the appeal on merits.

7. At the very outset, we notice that the order of First Appellate Authority (FAA) is ex-parte, since there was no compliance from the assessee to four notices issued from the office of the First Appellate Authority (FAA). We also note that the FAA had dismissed the appeal of the assessee *in-limine* without adjudicating the issues on merits.

8. The Ld.AR submitted that the assessee could not respond to the notices or appear before FAA during the appellate proceedings since the assessee was engaged in the business of rigs operation and held up in North India during the appellate proceedings. The Ld.AR further submitted that the FAA has dismissed the appeal for non-compliance and not on merits. Further, the Ld.AR has submitted that the assessment has also been completed on best judgment basis u/s.144 of the Act. It was prayed, in the interest of justice and equity, assessee may be provided with one more opportunity to present his case before the AO.

9. The Ld.DR submitted that adequate opportunities were provided from the offices of the FAA and AO and there is no violation of principles of natural justice. However, he could not controvert the fact that the CIT(A) has dismissed the appeal for non-compliance.

10. We have heard rival submissions and perused the materials on record. We noted that the CIT(A)-NFAC has simpliciter dismissed the appeal for non-compliance and not adjudicated or decided merits of the case. We find that appellate authority has no jurisdiction to dismiss the appeal for default of non-compliance without going into merits. The CIT(A) is bound to decide the appeal on merits even in

the absence of assessee. This view of ours is supported by the decision of Hon'ble High Court of Madras in the case of Southern Steel Industries vs. AAC (CT), reported in [1996] 101 STC 273 (Mad). In term of the above, the order of CIT(A)-NFAC is set aside.

11. On perusal of the assessment order, we note that the assessment has also been completed on best judgment basis u/s.144 of the Act since the assessee was a non-compliant and has not produced any details / documents / clarification / evidences in spite of ample opportunities given by the AO. We strongly deprecate the nonchalant attitude of the assessee in not responding to the notices issued from the offices of the AO and the FAA. However in the interest of justice and fair play, we are of the view that the matter ought to be restored to the files of the AO with a condition assessee pays a cost of Rs.25,000/- (Rupees twenty five thousand only) to be paid to Tamil Nadu State Legal Services Authority at the Hon'ble High Court of Madras. The amount of Rs.25,000/- shall be paid within a month's time from the date of receipt of this order and assessee shall produce the receipt for the said payment before the AO. Accordingly, the matter is remitted to the files of the AO for fresh adjudication. The AO shall afford reasonable opportunity of hearing to the assessee. The assessee is directed to co-operate with

the Revenue and shall not seek unnecessary adjournment. It is ordered accordingly.

12. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23rd June, 2025 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 23rd June, 2025

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT