आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.: 2084 & 2085/CHNY/2019**
निर्धारण वर्ष /Assessment Years: 2009-10 & 2011-12

M/s. Gospel Outreach Ministries, No.5/61, Narmadha Street, Athikulam, Madurai – 625 007. **PAN: AAATG 3305J**	v.	**The Income Tax Officer** Ward II(4), Madurai
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by	:	None
प्रत्यर्थी की ओर से/Respondent by	:	Shri G. Johnson, Addl. CIT

सुनवाई की तारीख/Date of Hearing	:	21.03.2022
घोषणा की तारीख/Date of Pronouncement	:	28.03.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

These two appeals by assessee are arising out of different orders of the Commissioner of Income Tax (Appeals)-2, Madurai in ITA Nos.0045/2012-13 & 0047/2012-13 dated 06.05.2019 & 10.05.2019 for the assessment years 2009-10 & 2011-12 respectively. The penalties under dispute, in both the appeals is as regards to late filing of returns of income for assessment years

2009-10 & 2011-12 u/s. 272(2)(e) of the Income Tax Act, 1961 (hereinafter 'the Act'), levied by the JCIT, Range-2, Madurai vide order dated 13.09.2012.

2. The only issue in these two appeals of assessee is as regards to the order of CIT(A) confirming the action of AO in levying penalty u/s.272A(2)(e) of the Act, for the assessment years 2009-10 & 2011-12 amounting to Rs.83,300/- & Rs.13,400/- respectively.

3. None is present from assessee's side. We have heard ld. Senior DR and gone through facts and circumstances of the case. We noted that according to AO, the assessee has filed returns of income for assessment years 2009-10 & 2011-12 as under:-

A.Y.	Due Date	Date of filing	Delay in no. of days
2009-10	30.9.2009	11.01.2012	833
2011-12	30.9.2011	10.02.2012	134

According to AO, there was a delay in filing of returns of income in term of section 139(1) r.w.s. 139(4A) of the Act and thereby delay of 833 days in assessment year 2009-10 and for assessment year 2011-12 delay was of 134 days. Accordingly, the AO levied penalty. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) vide different orders confirmed levy of penalty by stating that he has received letter from Income Tax Officer (Exemptions), Madurai dated 08.03.2019 whereby he has confirmed that there is delay of 833 days in assessment year 2009-10 and 134 days in assessment year 2011-12. Now, assessee before us filed a statement of facts and stated that there is no delay in filing of returns of income as per information received under RTI. He has filed the details of information received through RTI and he tabulated the details as under:-

Asst. Year	Due date for filing IT Return	Return filing date as per the RTI Act	Return filing date as said by the AO
AY 2009-10	30.09.2009	18.06.2009	11.01.2012
AY 2011-12	30.09.2011	18.05.2011	10.02.2012

The assessee has also filed copy of RTI information received from ITO(Exemptions), Madurai whereby certified dates of filing of return for these two assessment years and the relevant reply dated 29.04.2016 vide C.No.RTI/Exemption/2016-17/MDU received are as under:-

> Sub: Furnishing of information under RTI act-2005-reg.
> Ref: i) Your Online application receipt dt. 23.03.2016
> ii) Received by this office on 08.04.2016.
>
> With reference to the above, the dates of filing of return of income details are under:-

Sl.No.	A.Y.	Date of filing of Return of Income
1.	2009-10	18.06.2009
2.	2010-11	12.02.2012
3.	2011-12	18.05.2011

4. As the facts are not clear and the dates are under dispute, on the one hand, the ITO (Exemptions), Madurai before CIT(A) vide letter dated 08.03.2019 has sent information that there is delay in filing of returns of income, but as per RTI information received by assessee from ITO (Exemptions), Madurai there is no delay. As there is a dispute and facts are not clear, we remit these two appeals back to the file of the AO, who will verify the date of filing of returns of income and accordingly levy or delete the penalty. Hence, the orders of lower authorities for both the assessment years are set aside and these two appeals of the assessee are allowed for statistical purpose.

5. In the result, both the appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the court on 28th March, 2022 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	(महावीर सिंह)
(MANOJ KUMAR AGGARWAL)	**(MAHAVIR SINGH)**
लेखा सदस्य /ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 28th March, 2022

RSR

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.