

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

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **3069/CHNY/2019**

निर्धारण वर्ष /Assessment Year: 2011 - 12

Shri Naresh C Joshi,
401, Ashirward Residency,
Opp: Premier Kidney Hospital,
32, Shree Nagar Society,
Akota, Vadodara 390 020.

The Income Tax Officer,
v. Non-Corporate Ward 12(1),
Chennai .

PAN : AABPJ 8529L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri CA Mukund Bakshi
: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 22.02.2022

घोषणा की तारीख/Date of Pronouncement : 25.02.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-13, Chennai in ITA No.198/2018-19/AY-2011-12/CIT(A)-13 order dated 05.07.2019. The assessment was framed by ITO, Non-Corporate Ward 12(1), Chennai for the relevant assessment year 2011-12 u/s.144

r.w.s.147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 12.12.2018.

2. At the outset, it is noticed that the assessment order dated 12.12.2018 is passed u/s.144 of the Act. We noticed from the assessment order that ex-parte assessment order u/s.144 of the Act was framed and only one hearing i.e., vide letter dated 07.08.2018 was provided before completion of assessment allowing only 5 days time. Secondly when the appeal was taken up by CIT(A), the CIT(A) decided the appeal by issuing 3 / 4 notices, as the assessee has not responded, the CIT(A) based on one argument that "Vigilantibus non dormientibus jura subveniunt" dismissed the appeal for non-prosecution. As the orders of the lower authorities are ex-parte and without providing opportunity of hearing, the assessee now before us has raised the grounds of violation of natural justice vide Ground Nos.1 & 2 s under:-

"1. The Ld. Commissioner of Income Tax (Appeals)-13, Chennai has erred in law and in facts in dismissing the appeal of the appellant by an ex-parte order dated 05.07.2019 without affording reasonable opportunity of being heard and also ignoring the appellant's request made by letter dated 16.04.2019 for transfer of case records to Vadodara consequent to shifting his residence there. The impugned order being in violation of principles of natural justice may please be set aside.

2. The Ld. Commissioner of Income Tax (Appeals)-13, Chennai has further erred in law and in facts in the passing of the appellate order as a

non-speaking order without appreciating or considering the material on record.”

3. When these were pointed out to Id.Senior DR, he could not controvert the above factual situation.

4. After hearing both the sides and going through the records, we set aside the orders of lower authorities i.e., ex-parte orders and remand the matter back to the file of the AO for fresh adjudication after allowing reasonable opportunity of being heard to the assessee.

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

Order pronounced in the court on 25th February, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 25th February, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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