

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 2683/CHNY/2019

निर्धारण वर्ष /Assessment Year: 2010-11

Late Shri Yagasanan,
Rep. by Legal Heirs Smt. Y.
Gajalakshmi, Smt. Revathi,
Shri Yashwin, Smt. Pattammal,
New No.7, Old No.4,
Sundareswarar Koil Street,
Royapettah, Chennai – 600 014.

The Income Tax Officer,
v. Non-Corporate Ward-12(5),
Chennai - 34.

PAN: AAEPY 4463D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Y. Sridhar, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri P. Muthushankar, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 28.04.2022

घोषणा की तारीख/Date of Pronouncement

: 28.04.2022

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.120/2017-18/AY 2010-11/CIT(A)-13 dated 05.07.2019. The assessment was framed by the Income Tax Officer, Non-Corporate Ward-12(5), Chennai u/s.144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') for the assessment year 2010-11 vide order dated 29.12.2017.

2. At the outset, the Id.AR for the assessee Shri Y. Sridhar took us through the order of CIT(A) and stated that the CIT(A) has dismissed the appeal of assessee practically ex-parte and without adjudicating the issue on merits. The Id. AR stated 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. Hence, the Id.AR stated that this order should be set aside and matter may be remanded back to the file of the CIT(A) for fresh adjudication after allowing reasonable opportunity of being heard to the assessee.

3. The Id. Senior DR opposed to setting aside of the order of CIT(A) because the CIT(A) has given reasonable opportunity of being heard to the assessee.

4. We have heard rival contentions and gone through the facts and circumstances of the case. Admittedly and practically, the order of the CIT(A) is ex-parte and there is no adjudication of issue at all. We are of the view that unless the statute authorizes a quasi judicial authority to dismiss the appeal for default expressly or by inevitable

implication, the appellate authority has to decide the appeal and not to dismiss it for default. Probably, appellate authority has to decide the appeal on merits by a speaking order. Where an appeal has been disposed off ex-parte and without adjudicating the issue, ex-parte order is not maintainable. Hence, the order passed by the CIT(A) is not maintainable and accordingly the same is reversed. However, the order of CIT(A) is set aside but matter is remanded back to his file for fresh adjudication after allowing reasonable opportunity of being heard to the assessee.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

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

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 25th April, 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. |