

आयकर अपीलीय अधिकरण, 'ए' / SMC न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' /SMC BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT

आयकरअपीलसं./I.T.A.No.241 & 242/Chny/2023

(निर्धारणवर्ष / Assessment Year: 2011-12 & 2012-13)

Mr. Ravichandran, 5/90, Vijayankuppam, Agaharam Street, Ulundurpet TK Villupuram-607 204.	Vs	The Income Tax Officer, Ward-1, Villupuram.
PAN: BBYPR 4760G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. T.S. Lakshmi Venkatraman, F.C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. S.Chandrasekaran, JCIT

सुनवाईकीतारीख/Date of hearing	:	16.03.2023
घोषणाकीतारीख /Date of Pronouncement	:	16.03.2023

आदेश / ORDER

These two appeals filed by the assessee are arising out of separate orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi vide appeal No. ITBA/NFAC/S/250/2022-23 / 1049293964(1) dated 31.01.2023 & No. ITBA/NFAC/S/250/2022-23 / 1049063774(1) dated 24.01.2023. The assessments were completed by the ITO., Ward-2, Villupuram, 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 08.11.2018 / ITO, NFAC, Delhi for the assessment year 2012-13 u/s.147 r.w.s. 144B of the Act vide order dated 21.09.2021. Since, facts and

issue involved is common, both these appeals were heard together and are disposed off by this consolidated order, for the sake of convenience.

2. The only common issue in these two appeals of the assessee is as regards to order of the CIT(A) confirming action of the Assessing Officer in making addition of cash deposit made in City Union Bank account of the assessee for a sum of Rs.17,18,360/- in assessment year 2011-12 and a sum of Rs.42,97,320/- in assessment year 2012-13.

3. At the outset, learned counsel for the assessee stated that the order of the CIT(A) is ex-parte and the CIT(A) has dismissed both the appeals, just on the basis of non-representation and no finding is given, on merits. The learned counsel for the assessee took me through final findings of the CIT(A) which are recorded verbatim in both the years and hence, findings given in assessment year 2011-12 reads as under:-

"6.1 During the appellate proceedings, the appellant has only submitted submission in the form of 'Statement of Facts'. After that neither he has replied to hearing notices nor submitted any documentary evidence/information to prove his side. Sufficient

and adequate opportunities were afforded to the appellant as indicated at table at para no. 5.1.1. No reply whatsoever has been submitted by the appellant. Even the assessment was completed under Section 144 r.w.s. 147 of the Income Tax Act, 1961 due to non-compliance on the part of the appellant. It can be safely presumed that the appellant is not interested in pursuing his appeal. Therefore, the undersigned sees no reasons to interfere with the order of the Assessing Officer. Thus, the appeal raised by the appellant is dismissed.

7. In result, the appeal is dismissed.”

4. In view of the above, the learned counsel for the assessee stated that matter has to go back to the file of the CIT(A). Apart from this, the learned counsel for the assessee also stated that order of the Assessing Officer is ex-parte and passed u/s.144 r.w.s 147 of the Act and even the Assessing Officer has made addition without providing reasonable opportunity of being heard to the assessee .

5. Per contra, the Ld. Senior DR pointing out from para 5.1.1. of the CIT(A) order and stated that the CIT(A) has issued notices and fixed hearing for four times, but, there was no response from the assessee and moreover, the Assessing Officer has also fixed assessee's matter on various dates and

it is seen that the assessee was totally non-co-operative. Hence, he requested to confirm addition and not to send back the matter to the file of the Assessing Officer.

6. After hearing both sides and going through case records, I notice that order of the CIT(A) is only on non-prosecution and no decision is given on merits. No doubt, the assessee was provided enough opportunity by the CIT(A), but which was not availed by the assessee. Even going through order of the Assessing Officer, I notice that the Assessing Officer has provided many opportunities, but the assessee chose not to avail. In such circumstances, it is very difficult to decide whether the issue is to be decided by the Tribunal or it is to be remanded back to the file of the Assessing Officer. In the interest of substantial justice, I feel that the matter has to go back to the file of the Assessing Officer, where the assessee should be provided one more opportunity to lead evidence in relation to cash deposits made by the assessee in City Union Bank SB account in both assessment years. The assessee has to explain the source. But, this setting aside of impugned order is done only on the condition that for each assessment year,

the assessee shall pay a sum of Rs.10,000/- each i.e, assessee will pay a sum of Rs. 20,000/- to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras.

7. In view of the above, and subject to the above condition that the assessee will pay cost of Rs.20,000/-, the matter is remitted back to the file of the Assessing Officer. Needless to say that the assessee will provide all the details at the first instance before the Assessing Officer, who will decide the issue afresh in accordance with law. The appeals of the assessee are allowed for statistical purposes on the above terms.

8. In the result, both these appeals are allowed for statistical purposes.

Order pronounced in the open court on 16th March, 2023

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President

चेन्नई/Chennai,

दिनांक/Dated 16.03.2023

DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

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