

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

**आयकरअपीलसं./I.T.A.No.79/Chny/2023**

(निर्धारणवर्ष / Assessment Year: 2012-13)

Mr. Abdulrahim Sathik John 159-D, Kalarampatti Main Road, Kalarampatti, Salem-636 015.	Vs	The ADIT., National Faceless Appeal Centre (NFAC), Delhi.
PAN: BLBPS 6183F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. T.S. Lakshmi Venkataraman, F.C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. P.Sajit Kumar, JCIT

सुनवाईकीतारीख/Date of hearing	:	30.03.2023
घोषणाकीतारीख /Date of Pronouncement	:	30.03.2023

**आदेश / ORDER**

**PER MAHAVIR SINGH, VP:**

This appeal by the assessee is arising out of order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi vide appeal No. ITBA/NFAC/S/250/2022-23 / 1046323494(1) dated 15.10.2022. The assessment was completed by the ADIT., NFAC., Delhi, for the relevant assessment year 2012-13 u/s.147 r.w.s 144B of the Income Tax Act, 1961 (hereinafter "the Act") vide order dated 15.09.2021.

2. The only issue in this appeal of the assessee is against order of the CIT(A) confirming action of the Assessing Officer in

making assessment of cash deposit of Rs.40,66,800/- in his savings bank account.

3. We have heard rival contentions and gone through facts & circumstances of the case. At the outset, learned counsel for the assessee submitted that the order of the Assessing Officer is ex-parte, and even the order of the CIT(A) is for non-prosecution of appeal and there is no finding recorded except the following:-

*“There is no material on record to warrant interference in the order of the AO. In view of the fact that there is no material on record to warrant interference in the order of the AO, grounds of appeal are hereby dismissed.”*

4. When it was pointed out to the learned counsel for the assessee that despite many notices, the assessee has not represented before the CIT(A), what is alternative with the CIT(A), he could not explain. We noticed that the Assessing Officer has provided five opportunities, but the assessee has not complied with. Even, the CIT(A) has issued various notices and allowed reasonable opportunity to the assessee, but the

assessee failed to avail the same. When this was pointed out to the learned counsel for the assessee, he only pleaded mercy and stated that substantial justice should be done.

5. The Ld.Sr. DR on this, opposed for setting aside of impugned order, but could not argue that the CIT(A) has passed order on merits.

6. After going through facts in its entirety, we noticed that the CIT(A) has passed order for non-prosecution, which is not the position in law. Hence, we set aside the issue to the file of the Assessing Officer, subject to cost of Rs.10,000/- to be paid by the assessee to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras. The assessee will file all the details before the Assessing Officer at the first instance and he will represent as and when called for assessment by the Assessing Officer. In term of above, we set aside order and remit the issues back to the file of the Assessing Officer to decide the issue afresh, in accordance with law.

7. In the result, appeal of the assessee is allowed for statistical purposes on the above terms.

Order pronounced in the open court on 30<sup>th</sup> March, 2023

Sd/-  
( जी. मंजुनाथ )  
( G.Manjunatha )  
लेखा सदस्य / Accountant Member  
चेन्नई/Chennai,  
दिनांक/Date: 30.03.2023  
DS

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

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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