

आयकर अपीलिय अधिकरण, 'सी' (एस एम सी) न्यायपीठ,चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' (SMC) BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA No.: 428/CHNY/2023
निर्धारण वर्ष/Assessment Year: 2014-15

Ms. Swetha,
No.55, Bazzar Road,
Mylapore,
Chennai – 600 004.

The ACIT,
Vs. Non-Corporate Circle 10(1),
Chennai.

PAN: AASPS 4763L
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri M. Karunakaran, Advocate
: Shri G. Johnson, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 13.06.2023
घोषणा की तारीख/Date of Pronouncement : 16.06.2023

आदेश /ORDER

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Appeal No.NFAC/2013-14/10107390 dated 13.03.2023. The assessment was framed by the Additional/Joint/Deputy/ACIT/Income-tax Officer, National Faceless Assessment Centre, Delhi for the assessment year 2014-15 u/s.147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 08.03.2022.

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in reopening assessment by issuing notice u/s.148 r.w.s. 147 of the Act without considering the revised return filed by the assessee by virtue of which the assessee has already withdrawn the weighted deduction claimed u/s.35(1)(ii) of the Act voluntary in regard to donation made to research association M/s. Herbicare Healthcare Bio-Herbal Research Foundation. For this, assessee has raised various grounds which are argumentative, exhaustive and factual and hence, need not be reproduced.

3. I have heard rival contentions and gone through facts and circumstances of the case. Brief facts of the case are that the assessee is an individual, filed her return of income for the assessment year 2014-15 originally on 26.09.2014 admitting total income of Rs. 12,62,000/-. During the previous year relevant to the assessment year, the assessee has made a donation of Rs. 9,00,000/- to one scientific research association viz. M/s. Herbicare Healthcare Bio-Herbal Research Foundation (HHBRF) and claimed weighted deduction u/s 35(1)(ii) of the Act. Subsequently, the assessee has filed a revised return on 14.03.2016 withdrawing the weighted deduction claimed u/s 35(1)(ii) of the Act and admitted an

income of Rs. 29,24,520/- This return was filed under section 139(5) before one year from the end of the assessment year 2014-15 and is a valid return. The returns filed were not taken up for any scrutiny earlier. Subsequently, the assessing officer issued a notice u/s 148 of the Act dated 27.03.2021 along with the reasons for reopening. In the reasons given for re-opening of the assessment, the assessing officer has not stated that income has escaped assessment for the assessment year 2014-15 and was alleged that there was failure on the part of the assessee to fully and truly disclose all the material facts necessary for the assessment. The AO has made reference to the survey operations carried out in the case of Research Association. In reply, the assessee submits that when the assessing officer issued notice u/s 148 in March, 2021, the assessing officer had in his possession a valid return of income filed on 14.03.2016 in which the correct income was offered and there was no suppression of income or any escapement of income for tax. Hence the assessing officer is not competent to issue notice u/s 148 of the Act on 27/3/2021 when no income has escaped assessment. The Assessing officer without correctly appreciating the objections raised against re-opening has completed the assessment u/s 143(3) r.w.s 147 by accepting the income returned of Rs. 29,24,520/-. The fact that the income returned was accepted would clearly prove that there was no

escapement of income. The return disclosing the correct income was one filed u/s 139(5) and the same income was shown in the return filed in response to notice issued u/s 148 of the Act also which was accepted in the re-assessment. The assessee submits that the objections raised against re-opening of the assessment were rejected on invalid grounds. The revised return filed by the assessee on 14.03.2016 was not at all considered before re-opening of the assessment and not stated in the reasons for re-opening of the assessment. The survey operations were not conducted in the premises of the assessee but in the premises of the Research Association. Hence, the date of survey conducted in the premises of Research Association cannot be taken for deciding whether the return of income filed by the assessee was correct or not. The assessing officer has given his own interpretation of the provisions of section 139(5) to reject the claim of the appellant. Under section 139(5), an assessee is permitted to revise the return if he discovers any omission or any wrong statement in the return earlier filed. The withdrawal of weighted deduction on the assessee's own volition would definitely fall under the provisions of section 139(5) and therefore the assessing officer cannot ignore the return validly so filed.

I noted that neither the AO nor CIT(A) has understood the issue that once the assessee herself has filed revised return within the due date as prescribed u/s.139(5) of the Act and withdrawn the scheme of weighted deduction claimed u/s.35(1)(ii) of the Act for an amount of Rs.9,00,000/- made to one scientific research association, M/s. Herbicure Healthcare Bio-Herbal Research Foundation, nothing survives for reopening of assessment and hence I quash the reopening and allow this issue of assessee's appeal.

3.1 As regards to other issues on merits, since I have quashed the reopening, I need not to go into the merits of the assessee. Accordingly, the appeal of the assessee is allowed.

4. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 16th June, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 16th June, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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