

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' 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.: **1593/CHNY/2023**

निर्धारण वर्ष/Assessment Year: 2021-22

Shri Perumal Saravanan,
22/1A, Durga Nagar,
Anumepalli Agragaram,
Zuzuwadi, Hosur – 635 126.

The Income Tax Officer,
Vs. Ward 1,
Hosur

PAN: AXBPS 5561L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri N. Arjun Raj, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 29.01.2024

घोषणा की तारीख/Date of Pronouncement

: 29.01.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

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 order No.ITBA/NFAC/S/250/2023-24/1054657334(1) dated 27.07.2023. The assessment was framed by the Income Tax Officer, Ward 1, Hosur for the assessment year 2021-22 u/s.143(3) of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 15.12.2022.

2. At the outset, it is noticed that the appeal filed by the assessee is barred by limitation by 93 days. The order of CIT(A) dated 27.07.2023 was received by the assessee on 27.07.2023 as per Form 36. The appeal has to be filed on or before 25.09.2023 but was filed only on 27.12.2023. The assessee has filed affidavit along with condonation petition stating the reason that there is a failure on the part of the consultant or tax advisor to inform the assessee of passing of ex-parte order as well as delay in filing the present appeal. In view of the above reason, we condone the delay and admit the appeal.

3. At the outset, the Id.counsel for the assessee stated that the order of CIT(A) is ex-parte and CIT(A) has allowed effectively only two opportunities. He drew our attention to para 4 of the CIT(A) order, which reads as under:-

“4. During the course of appellate proceedings vide notices dated 01.03.2023, 12.07.2023 and the final opportunity was given on 19.07.2023 and requested the appellant to file the submission by 26.07.2023. However no submissions were made during the entire appellate proceedings. The appellant during the appellate proceedings did not comply with the notices and hence made no submission in support of grounds of appeal. So it is held that the appellant had nothing more to submit except for raising the ground.”

Apart from this, the Id.counsel stated that the order of CIT(A) i.e., final disposal is practically for non-prosecution and just simpliciter confirmed the action of the AO by observing in para 5 as under:-

“5. In the instance of the case the appellant failed to make any submissions in support of grounds of appeal, this gives rise to an undisputable conclusion that the assessee has got nothing more to say in this regard. I have gone through the record before me and based on the record I have decided to adjudicate the issue on the merits of the case. In the instant case the AO has rightly assessed an income of Rs.2,24,60,480/-. Since the appellant failed to substantiate appellant’s claim and addition made by the Assessing Officer of Rs.2,16,16280/- is hereby confirmed.”

3. When these facts were confronted to Id. Senior DR, he could not controvert the fact that the order of CIT(A) is for non-prosecution and there is no adjudication by CIT(A) at all. Hence, we set aside the order of CIT(A) and remand the matter back to his file for fresh adjudication after allowing reasonable opportunity of being heard to the assessee in accordance with law.

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

Order pronounced in the open court at the time of hearing on 29th January, 2024 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 29th January, 2024

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.