

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजूनथा जी, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1387, 1388, 1389 & 1390/Chny/2023
निर्धारण वर्ष /Assessment Years: 2013-14, 2014-15, 2015-16 & 2016-17

Eswaramurthy Prakash,
9/14, Kallampalayam,
Tirupur,
Coimbatore – 641 602
[PAN: AVUPP-1571-E]
(अपीलार्थी/Appellant)

The Income Tax Officer,
Vs. Ward-1(2),
Tirupur.
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1391, 1392, 1393 & 1394/Chny/2023
निर्धारण वर्ष /Assessment Years: 2013-14, 2014-15, 2015-16 & 2016-17

Eswaramurthy Prakash,
9/14, Kallampalayam,
Tirupur,
Coimbatore – 641 602
[PAN: AVUPP-1571-E]
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(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri Yeshwanth Kumar, C.A
प्रत्यर्थी की ओर से /Respondent by : Shri ARV Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 29.01.2024
घोषणा की तारीख /Date of Pronouncement : 29.01.2024

आदेश / ORDER

Per V. Durga Rao, Judicial Member:

The above all the appeals filed by the assessee are directed
against the orders of the Learned Commissioner of Income Tax

(Appeals), National Faceless Appeal Centre [NFAC], New Delhi dated 28.07.2023 & 27.09.2023, respectively, relevant to the Assessment Years 2013-14 to 2016-17.

2. The appeals in ITA Nos.1387 to 1390/Chny/2023, the facts are identical and issues are common, for the sake of convenience the appeal in ITA No.1387/Chny/2023 for A.Y 2013-14 facts are considered for disposal of all the appeals.

3. The assessee filed a return of income and the same was taken for scrutiny. Subsequently, during the assessment proceedings, the A.O has issued a notice u/s. 142(1) of the Income Tax Act, 1961 (hereinafter "the Act") dated 25.11.2020, 11.02.2021, 26.02.2021 & 27.02.2021, the assessee not responded.

4. The A.O, for the above non compliance from the assessee initiated penalty proceedings u/s. 271(1)(b) of the Act and issued a show cause notice u/s. 274 r.w.s 271(1)(b) of the Act dated 27.09.2021, calling the reasons for non compliance.

5. Later after the introduction of faceless assessment scheme, 2019, this case was assigned to re-fact unit, and fresh show cause notice was issued on 11.11.2021. No explanation was given by the assessee. Again, the A.O has issued one more notice on 06.12.2021.

In response to the notice issued by the A.O, the assessee has filed a reply on 05.01.2022 and made the submissions as under:

“I wish to inform your good selves that due to change of E-mail id, I have not received the Notice u/s. 142(1) of the Act. This noncompliance is not intentional.

Further I wish to submit that I wish to file appeal/Writ against you goodselves order before the Hon’ble Commissioner of Income Tax (appeals)/High Court.

Hence I request your good selves to kept in abeyance the penalty proceedings until the disposal of appeal.”

6. The A.O by considering the above explanation of the assessee, and he found that the assessee has not substantiated his explanation for non compliance of the notices issued u/s. 142(1) of the Act particularly when the assessee changed his e-mail ID and the same was not intimated to the A.O and also he has not filed any evidence to substantiate his case before the A.O. Therefore, the A.O has levied penalty of Rs. 10,000/- for each notices i.e., 25.01.2020, 11.02.2021, 26.02.2021 and 26.07.2021 u/s. 271(1)(b) of the Act. On appeal, the Id. CIT(A) confirmed the order of the A.O by noting that the assessee has not filed any evidence to support his argument that his e-mail ID was maintained by the Income tax Practitioner and confirmed the order of the A.O.

7. On being aggrieved, the assessee carried the matter before the Tribunal.

8. Before us, the Ld. counsel for the assessee has submitted that his e-mail ID account is maintaining by his Income tax Practitioner, the Income tax Practitioner not communicated with regard to notice issued by the A.O u/s 142(1) of the Act. He further submitted that non compliance of the notice issued u/s. 142(1) of the Act, the A.O can only impose penalty of Rs. 10,000/- and for not all the notices issued by the A.O.

9. On the other hand, the Ld. D.R has submitted that the A.O has a power to impose a penalty u/s. 271(1)(b) of the Act for non compliance of each notice and supported the orders passed by the authorities below.

10. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. It is an admitted fact that the assessee has not responded to the notices issued by the A.O for four instances. The only explanation given by the assessee before the A.O that he has changed his e-mail ID, but no evidence is placed before the A.O for the same. Before the Ld. CIT(A) he has submitted that his Income tax Practitioner is maintaining his e-mail ID. Therefore, he is not aware of the notice. We find that the

explanation of the assessee is inconsistent. Even the assessee has not filed any evidence to substantiate that his income tax practitioner is maintaining his e-mail account. Therefore, the explanation given by the assessee cannot be accepted. So far as another argument of the assessee is that the A.O has a power only to impose of penalty of Rs. 10,000/- irrespective of number of notices issued by the A.O. We have gone through section 271(1)(b) of the Act and it is very clear that the assessee has failed to comply with the notice, the A.O has a power to impose of penalty of Rs. 10,000/-. It means that for each notice, the A.O has power to impose penalty of Rs. 10,000/-. Therefore, in this case four notices issued by the A.O, no response from the assessee hence, penalty of Rs. 40,000/- has imposed. Therefore, the A.O was justified in imposing penalty of Rs. 40,000/- for issuing notices in four instances. We find that the A.O has rightly imposed penalty in accordance with law i.e., as per Section 271(1)(b) of the Act and the same is confirmed by Ld. CIT(A). Hence, we find no reason to interfere with the order passed by the Ld. CIT(A). In view of the above, all the four appeals in ITA Nos.1387 to 1390/Chny/2023 are dismissed.

11. In the result, the appeals of the assessee in ITA Nos.1387 to 1390/Chny/2023 are dismissed.

ITA Nos.1391, 1392, 1393 & 1394/Chny/2023:

12. When these appeals were taken up for hearing, the learned Counsel for the assessee has submitted that the assessee could not appear before the Ld. CIT(A) as the circumstances were beyond his control. He further prayed that one more opportunity may be given to the assessee to substantiate his case before the Ld. CIT(A).

13. On the other hand the learned Departmental Representative has strongly opposed to remit the matter back to the A.O and submitted that if at all the matter may be remit back to the A.O with some costs.

14. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. In this case, the assessment was completed u/s. 147 r.w.s 144 r.w.s 144B of the Act dated 24.09.2021 passed by National Faceless Assessment Centre, Delhi. The assessee has not filed any details either before the A.O or Ld. CIT(A) despite various opportunities afforded. Thus, we find that it is a fit case to impose a cost and accordingly we impose cost of Rs. 10,000/- to all the four appeals. However, to meet the ends of natural justice, we are of the view that one more opportunity may be given to the assessee to substantiate his case before the A.O subject to payment of cost of Rs.10,000/- for each assessment year to Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras

within a period of one month from the date of receipt of this order and produce the receipt before the A.O. Accordingly, we set aside the orders passed by the Ld. CIT(A) being an exparte order and remit the matter back to the file of the A.O to adjudicate this appeal afresh in accordance with law, after giving reasonable opportunity to the assessee. Since, facts are identical in other assessment years, we remit the matters back to the file of A.O for deciding the issue after considering the details as may be filed by the assessee.

15. In the result, the appeals of the assessee in ITA Nos.1391 to 1394/Chny/2023 are allowed for statistical purposes.

Order pronounced in the open Court on 29th January, 2024.

(श्री मंजूनाथा जी)
(**MANJUNATHA. G**)

लेखा सदस्य/**ACCOUNTANT MEMBER**

(वी दुर्गा राव)

(**V. DURGA RAO**)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 29th January, 2024.
EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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