

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथा. जी, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER**

आयकर अपीलसं./ITA No.: 1433/CHNY/2023

निर्धारण वर्ष/Assessment Year: 2021-22

**M/s. Q-872 Thiruthangal
Primary Agricultural Co-
Operative Credit Society Ltd.,**
Thiruthangal,
Virudhunagar – 626 130.

The Income Tax Officer,
vs. Ward 3,
Virudhunagar.

PAN: AAAAQ 0201C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Girish Kumar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 19.02.2024

घोषणा की तारीख/Date of Pronouncement : 19.02.2024

आदेश / O R D E R

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) in order No.ITBA/NFAC/S/250/2023-24/1057107725(1) dated 16.10.2023. The assessment order was framed by the Assessing Officer, Assessment Unit, Income Tax Department for the assessment year 2021-22 u/s.144 r.w.s.144B of

the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 21.12.2022.

2. At the outset, the Id.counsel for the assessee stated that the CIT(A) passed ex-parte order and even the order of AO is best judgment assessment framed u/s.144 r.w.s. 144B of the Act and both the authorities below have passed order in gross violation of principles of natural justice. For this, the Id.counsel for the assessee drew our attention to following ground Nos.2,3 & 4:-

2. The NFAC, Delhi erred in dismissing the appeal ex-parte and ought to have appreciated that any order passed in gross violation of principles of natural justice should be reckoned as nullity in law.

3. The NFAC, Delhi failed to appreciate that the provisions of Section 250(6) of the Act were not followed in passing the impugned order and hence ought to have appreciated that ex-parte order under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

4. The NFAC, Delhi failed to appreciate that having not dealt with the issues on merits, the impugned order passed by them should be considered as non-est in law and ought to have appreciated that the cryptic order passed by them would defy the principles laid down by the Calcutta High Court by explaining the process of adjudication, thereby vitiating the ex-parte appellate order under consideration.

3. The Id.counsel for the assessee first took us through the assessment order and stated that the assessment order is ex-parte

and best judgment assessment u/s.144 of the Act dated 21.12.2022, thereby making various additions as under:-

Sl.No.	Description	Amount (in INR)
1	Income as per Return of income filed	Nil
2	Income as computed u/s143(1)(a)	80,99,100/-
3	Variation in respect of issue of 80P <para 3.8(i)>	80,99,100/-
4	Variation in respect of issue of provisions debited in profit and loss account <para 3.8(ii)>	45,05,576/-
5	Variation in respect of issue of cash deposit <para 3.8(iii)> u/s 69A r.w.s.115BBE of the Act	3,81,46,600
6	Variation in respect of issue of time deposit <para 3.8(iv)> u/s 69A r.w.s. 115BBE of the Act	13,70,21,775
7	Variation in respect of issue of cash withdrawal <para 3.8(v)> u/s 69C r.w.s. 115BBE of the Act	8,95,69,959
8	Total Income determined as per the above proposal	27,73,43,014/-

The Id.counsel stated that the AO as against 'nil' returned income assessed the income of the assessee at Rs.27,73,43,014/-. Subsequently, the Id.counsel took us through the order of CIT(A) confirming the addition for non-prosecution as well as on merits. But, he stated that on merits in para 5.7, the CIT(A) has simpliciter confirmed the action of the AO and there is no adjudication on the facts and it is totally a non-speaking order. When a query was put to Id.counsel that from the face of the assessment order, it can be gathered that the AO has given various opportunities which are

narrated in page 2 of the assessment order and the assessee did not comply with. The details of opportunities are mentioned in para 2 at page 2 of the assessment order. As regards to the order of CIT(A), it is noticed that the CIT(A) has also fixed the appeal for hearing on three occasions and none represented nor filed any adjournment petition. When these facts were narrated to Id.counsel for the assessee or confronted to him, he could not reply anything. It was informed to the Id.counsel that what was the remedy left with the AO other than best judgment u/s.144 of the Act and the CIT(A) not to decide the appeal ex-parte. The Id.counsel could not contradict the same.

4. On the other hand, the Id.Senior Departmental Representative stated that the order of the AO and the CIT(A) has clearly narrated the default on the part of the assessee and non-cooperative attitude. He stated that the assessment proceedings are time barred and hence, the AO has no alternative but to decide the assessment as best judgment assessment u/s.144 of the Act, due to non-representative of assessee despite fixing the case for 8 times. He stated that the assessee's attitude is totally non-cooperative and hence, he requested that appeal be dismissed in limine or appeal

can be decided on merits. He further submitted that even now the assessee has not filed any details.

5. We have heard rival contentions and gone through the facts and circumstances of the case. As regards to the issue of principles of natural justice, we are in full agreement with the assessment order and the order of CIT(A) but in the interest of natural justice that as against returned income of assessee, the income determined by the AO in the best judgment assessment is at Rs.27,73,43,014/-, which is of high pitched assessment. We have gone through the assessment order and noticed that the AO has framed the assessment in a summary manner without conducting any enquiry. The AO has all the powers under the Act to enforce attendance of witnesses, can examine the books of accounts and documents. Even the order of CIT(A) on merits seems just repetition of the AO's order and there is no independent adjudication. Going by the facts and cumulative thinking, we, in the interest of natural justice set aside the issue to the file of the CIT(A), who after taking remand report from the AO will re-decide the issue on merits after allowing reasonable opportunity of being heard to the assessee. This set aside is subject to cost of Rs.25,000/- to be paid to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras on or

before 28.03.2024. The assessee will pay this cost and produce the receipt before the CIT(A). Needless to say, the assessee this time will appear before the CIT(A) at the first instance of issuance of notice either in e-mail or by any other mode. In term of the above, the order of CIT(A) is set aside and matter restored back to his file for fresh adjudication.

6. 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 19th February, 2024 at Chennai.

Sd/-

(मंजुनाथा. जी)

(MANJUNATHA.G)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 19th February, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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