

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, HON'BLE VICE PRESIDENT AND  
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **1501 & 1502/Chny/2023**

निर्धारण वर्ष / Assessment Years: 2016-17 & 2017-18

M/s. Hand Made Films,  
S3, No. 27,  
5 Twinkle Roof Apartments,  
State Bank Colony,  
2<sup>nd</sup> Cross Street,  
Virugambakkam,  
Chennai – 600 092.

**[PAN: AAGFH-6400-D]**

(अपीलार्थी/Appellant)

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

सुनवाई की तारीख/Date of Hearing

घोषणा की तारीख/Date of Pronouncement

v. The Assistant Commissioner of  
Income Tax,  
Non Corporate Circle -10(1),  
Wanaparthy Block, No. 121,  
M.G. Road, Nungambakkam,  
Chennai – 600 034.

(प्रत्यर्थी/Respondent)

: Shri. T. Vasudevan, Advocate  
: Shri. D. Hema Bhupal, JCIT

: 19.02.2024

: 19.02.2024

**आदेश /ORDER**

**PER MANJUNATHA. G, ACCOUNTANT MEMBER:**

These two appeals filed by the assessee are directed against separate but identical orders passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, both dated 27.10.2023 and pertains to assessment years 2016-17 & 2017-18. Since, facts

are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The brief facts of the case are that, the appellant is a partnership firm and carrying on the business of production and exhibition of Tamil Feature films in the name and style of M/s. Hand Made Films. The appellant firm had not filed its return of income for both assessment years. Therefore, on the basis of information available with the Assessing Officer, the assessment has been re-opened u/s. 147 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and notice u/s. 148 of the Act dated 31.03.2021, was issued and duly served on the assessee. The assessee has filed its return of income in response to notice u/s. 148 of the Act. The case was selected for scrutiny and during the course of assessment proceedings, the assessee neither appeared nor filed any details. Therefore, the Assessing Officer passed best judgment assessment u/s. 143(3) r.w.s 147 r.w.s 144B of the Act and made additions on the basis of estimated profit on gross receipts for both assessment years.

3. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee neither appeared nor filed any details even though, the case was posted for hearing on four occasions, as per details available in Para 4 of the Id. CIT(A). Therefore, the Id. CIT(A) disposed off appeals filed by the assessee *ex parte* and confirmed additions made by the Assessing Officer towards estimation of profit on gross receipts. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, Shri. T. Vasudevan, Advocate, submitted that the Id. CIT(A) has passed *ex parte* order for non-appearance of the assessee and their counsel, but such appeals has been disposed off on technical ground, without discussing the issues on merits. The Ld. Counsel for the assessee, further submitted that the appellant could not appear before the Id. CIT(A) due to non-communication of notice of hearing, for the reason that the notices sent by the Id. CIT(A) was received by an employee which was not informed to the appellant firm. Therefore, the appellant could not appear as and when the appeals was called for, but non-

appearance of the assessee is neither for the purpose of deriving any benefit nor to seek any undue benefit, but purely by mistake of an employee, who is handling the tax matter. Therefore, he submitted that the appeals may be set aside to the file of the Assessing Officer to give one more opportunity of hearing to the assessee.

4. The Id. DR, Shri. D. Hema Bhupal, JCIT, on the other hand referring to Para 4 of Id. CIT(A) order submitted that, although the first appellate authority has given four dates for hearing, but the assessee neither filed any written submissions nor explained the reasons for non-appearance. Therefore, he submitted that if at all the appeals needs to be set aside to the file of the CIT(A), the same may be set aside after imposing cost on the assessee for non-prosecution of appeals.

5. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, the assessee is non-cooperative at all stages of proceedings, which is evident from the assessment order passed by the Assessing Officer, where the Assessing Officer has passed best judgment u/s. 143(3) r.w.s 147 r.w.s.

144B of the Act, and decided the issue on the basis of material available on record. The appellant although filed appeals before the Id. CIT(A), but did not file any details and also not explained reasons for non-appearance. From the above it is undoubtedly clear that, the assessee is very casual in his approach before the tax authorities and also the first appellate authority and thus, the conduct of the assessee cannot be appreciated. At the same time, although the Id. CIT(A) has disposed off, appeals filed by the assessee, but such appeals has been disposed off on technical grounds for non-appearance of the assessee, without discussing the issues on merits. It is a well settled principle of law by the decisions of various courts, even in a case of disposal of appeal by the appellant authorities *exparte* for non-appearance of the assessee or his counsel, the appeal should be disposed off on merits on the basis of material available on record. In the present case, the Id. CIT(A) has dismissed appeals filed by the assessee without discussing the issues on merits.

6. In this view of the matter and by considering facts and circumstances of the case, we are of the considered view that the assessee deserves one more opportunity of hearing before

the Id. CIT(A) to explain its case, but subject to imposition of nominal cost of Rs. 25,000/- per year. The assessee is directed to pay the cost to the State Legal Aid Authority, Hon'ble High Court of Madras and produce the proof of payment of cost to the Registry within 15 days from the date of issue of this order. Subject to above condition, the appeals for both assessment years are set aside to the file of the Id. CIT(A) and direct the Id. CIT(A) to reconsider the issues on merits, after providing reasonable opportunity of hearing to the assessee.

7. In the result, appeals filed by the assessee for assessment years 2016-17 & 2017-18 are allowed for statistical purposes.

Order pronounced in the open court on 19<sup>th</sup> February, 2024 at Chennai.

**Sd/-**

**(महावीर सिंह )**

**(MAHAVIR SINGH)**

**उपाध्यक्ष /Vice President**

**Sd/-**

**(मंजूनाथा. जी)**

**(MANJUNATHA. G)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 19<sup>th</sup> February, 2024

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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