

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.: 1446/CHNY/2023

निर्धारण वर्ष/Assessment Year: 2017-18

**Hallmark Infrastructure Pvt.  
Ltd.,**  
43, United Plaza, Usman Road,  
T.Nagar,  
Chennai – 600 017.

**The Income Tax Officer,**  
vs. Corporate Ward 2(3),  
Chennai – 34.

**PAN: AABCH 5970J**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Ms. N.V. Lakshmi, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 20.02.2024

घोषणा की तारीख/Date of Pronouncement

: 20.02.2024

**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) in order No.ITBA/NFAC/S/250/2023-24/1056886068(1) dated 09.10.2023. The assessment order was framed by the Income Tax Officer, Ward 2(3), Chennai for the

assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 27.12.2019.

2. At the outset, the Id.counsel for the assessee submitted that the order of CIT(A) is ex-parte and totally non-speaking and in violation of principles of natural justice and qua that assessee has raised the following three grounds:-

“1. The order of the Commissioner of Income Tax (Exemptions) [‘CIT(A)’ is against the law, the facts and circumstances of the case and the principles of equity and natural justice.

2. The CITA() erred in completing the proceedings in an arbitrary manner without considering the materials available on records.

3. The CIT(A) erred in dismissing the appeal without granting reasonable opportunity of being heard.”

3. We have heard rival contentions and gone through facts and circumstances of the case. The Id.counsel for the assessee submitted that the only issue for adjudication before CIT(A) was cash deposit made by assessee in bank account maintained by it in Bank of India bearing A/c No.801920110000673 amounting to Rs.1,02,36,200/- during financial year 2016-17 relevant to assessment year 2017-18. The Id.counsel submitted that the assessee company is engaged in the business of real estate having its registered office in T.Nagar, Chennai. The AO noted that the assessee has deposited a sum of Rs.92.35 lakhs during

domentization period out of the total cash deposits in the above bank account at Rs.1,02,36,000/-. The assessee claimed before the AO that the assessee has received cash advance for sale of flats and plots and assessee furnished copies of sale agreement entered with various persons. The AO noted that the sale agreements are not registered and authenticity of these documents are not proved. According to him, the onus lies on the assessee to prove the genuineness of transaction, credibility of sale agreement, and creditworthiness of the persons from whom advances have been received in cash. Hence according to him, the evidences which provide cash receipt to the tune of Rs.16,53,323 alone can be given credit and therefore, the balance cash of Rs.85,82,877/- is treated as unexplained cash credit u/s.68 of the Act and taxed under the provisions of section 115BBE of the Act. Aggrieved, assessee preferred an appeal before CIT(A).

4. The Id.counsel stated that the CIT(A)'s order is simpliciter for non-prosecution and the relevant order reads as under:-

*“The present filed appeal is directed against order u/s 143(3) of the Income Tax Act (herein after referred as ‘Act’), issued by AO on 27.12.2019 for the assessment year 2017-18.*

*2. Aggrieved with the order issued by the AO, the appellant has filed present appeal on 26.01.2020. In the course of appellate proceedings, it is seen that the appellant was issued and served various notices u/s 250 of the Act from this office to present his contentions and any documents*

*supporting them. The said notices were issued right from 2020 through till 2023 and all of them (3 in number) remain un-complied with. The National Faceless Appeal Centre (NFaC) also in November, 2022 enabled communication window to facilitate filing of submissions by the appellant but to no avail.*

*3. In view of the above, it is clear that the appellant is not interested in prosecuting the present appeal because there has been no response as yet. In view of the above, the appeal stands dismissed.*

*Thus, the appeal filed by the appellant stands dismissed.”*

The Id.counsel further stated that the order of CIT(A) is non-speaking but on query from the Bench, she stated that three opportunities were provided by CIT(A) for representing the case but assessee could not avail them due to illness.

5. 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. This set aside is subject to cost of Rs.5,000/- 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). In term of the above, the order of CIT(A) is set aside and matter restored back to his file for fresh adjudication. Needless to

say that the CIT(A) will allow reasonable opportunity of being heard to the assessee and assessee is also directed to represent its case as and when notice is issued, otherwise adverse view can be taken against the assessee.

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 20<sup>th</sup> 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 20<sup>th</sup> February, 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.        |                     |