

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.: **1640/CHNY/2023**

निर्धारण वर्ष/Assessment Year: 2017-18

Shri Shanmugam Ravindran,
349-C, Tirupur Road,
Kangayam – 638 701.

The Income Tax Officer,
vs. Ward – 1(4),
Tirupur – 641 602.

PAN: AGXPR 1150R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri H. Yeshwanth Kumar, C.A
: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 21.02.2024

घोषणा की तारीख/Date of Pronouncement : 21.02.2024

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/250/2023-24/1057503550(1) dated 30.10.2023. The assessment order was framed by the Assessing Officer, National Faceless Assessment Centre, Delhi for the assessment year 2017-18 u/s.147 r.w.s. 144B

of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 25.09.2021.

2. At the outset, the Id.counsel for the assessee submitted that the order of CIT(A) is ex-parte and that of the AO is also ex-parte u/s.147 r.w.s. 144B of the Act and contrary to the principles of natural justice as no proper opportunity of being heard was provided to the assessee. For this, the Id.counsel drew our attention to following ground Nos.1 to 5:-

“1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case and is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

Legal Grounds

3. For that the Commissioner of Income Tax (Appeals) erred in disposing off the appeal ex-parte.

4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant could have derived no benefit by not responding to the notices issued on the appellant.

5. For that the appellant had reasonable cause for not responding to the notices issued by the Commissioner of Income Tax (Appeals).”

3. Brief facts are that the assessee has not filed his return of income and the AO on verification of AIIMS module of the Income Tax Department's i.e., data base found that the assessee has

deposited cash deposit to the tune of Rs.21,17,580/- during the demonetization period. Further the AO noted that on verification of e-filing portal, it is noticed that the assessee has filed belated return on 31.12.2018 declaring total income of Rs.10,76,110/-. Accordingly, notice u/s.148 of the Act was issued and in response to the same, the assessee filed return of income on 19.02.2021 repeating the same income. The AO noticed that the assessee is doing business of purchase and sale of coconuts in the name of Om Sri Traders. The AO required the assessee to explain the cash deposits deposited during demonetization period amounting to Rs.21,17,580/-. The assessee explained that he is engaged in the business of purchase and sale of coconuts and coconuts being agricultural produce, purchases are made from agriculturists and they do not issue any bills. He stated that during the financial year 2016-17 relevant to assessment year 2017-18, the total purchase and sales are to the tune of Rs.3,18,09,311/- and Rs.3,75,06,600/-. He explained that the total deposits made during demonetization period is Rs.21,17,580/- in the bank account no.155705001958 and out of this, a sum of Rs.85,000/- is by way of demonetized currency which is in Specified Bank Notes. It was claimed by the assessee that this cash deposit during demonetization period of Rs.21,17,580/- is from the business proceeds as assessee's

business volume is Rs.3 crore and hence, it is explained. The AO noted that the assessee has made self statement but has not submitted any documentary evidence or confirmation or evidence that the cash deposits made during demonetization period is out of sale proceeds of business. Therefore, he added the entire cash deposits of Rs.21,17,580/- as unexplained investment u/s.69A of the Act and brought to tax u/s.115BBE of the Act. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) without noting merits of the case, dismissed the assessee's appeal in limine by applying the principle of "Vigilantibus non dormientibus jura subveniunt". Aggrieved assessee came in appeal before the Tribunal.

5. Now before us, the Id.counsel for the assessee stated that the CIT(A) has not allowed reasonable opportunity of being heard but it was pointed to him that in para 4 of CIT(A)'s order, it is categorically mentioned that there are seven hearing opportunities provided and there was no response from the assessee's side. The relevant para 4 of the CIT(A) reads as under:-

“4. During the course of appeal proceedings, the appellant has been issued several hearing notices dated 15.11.2022, 14.03.2023, 30.03.2023, 12.04.2023, 03.05.2023, 28.06.2032 and 06.07.2023. In response to notice dated 06.07.2023, the appellant requested for adjournment. However, no documents/written submission in support of his contention was filed by the appellant. Accordingly, a full and final opportunity notice was issued on 20.09.2023. The appellant has not complied to the final opportunity notice also till date. The appeal is thus being decided on the basis of material available on the record.”

6. On the other hand, the Id.Senior DR stated that the CIT(A) has no option except to dismiss the appeal as none was present despite several opportunities and assessee is totally non-cooperative and non-compliant. Hence, the CIT(A) has rightly dismissed the appeal

7. Having heard both the sides and going through the facts, we noted that in the interest of substantial justice, 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.10,000/- 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.

8. 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 21st February, 2024 at Chennai.

Sd/-

(मंजुनाथा. जी)

(MANJUNATHA.G)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 21st 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.