

आयकर अपीलीय अधिकरण, 'बी' (एस एम सी) न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' (SMC) BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA No.: **1520/CHNY/2023**

निर्धारण वर्ष/Assessment Year: 2017-18

Ms. Kumar Uma,
49, Santhiri Kulam Street,
Koranad,
Mayiladuthurai,
Nagapattinam – 609 002.

Vs. The Income Tax Officer,
Ward 2
Kumbakonam.

[PAN AENPU 7359H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri G. Tarun, Advocate
: 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

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2023-24/1057993883 (1) dated 16.11.2023. The assessment was framed by the Income Tax Officer, Ward 2, Kumbakonam for the assessment year 2017-18 u/s.144 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 CIT(A) and AO both have passed ex-parte order without providing reasonable opportunity of being heard to the assessee.

3. The Id.counsel for the assessee submitted that the assessment was framed ex-parte and best judgment assessment u/s.144 of the Act for assessing the cash deposits made by assessee during demonization period in demonetized currency amounting to Rs.17,28,500/-. Admittedly, the Id.counsel for the assessee submitted that the assessee has deposited cash during demonetization period i.e., 09.11.2016 to 30.12.2016 in her bank account maintained with Karur Vysya Bank, Mayiladuthurai. The AO noted that originally the assessee has not filed her return of income either u/s.139(1) or 139(4) of the Act and filed return of income in response to notice u/s.142(1) of the Act on 15.08.2019 admitting total income of Rs.3,42,850/-. As the assessee could not explain anything except made a claim vide letter dated 17.12.2019 that the cash deposit is out of hotel business income as the assessee is running hotel business in the name and style of "Hotel Saravanabhavan". The assessee also claimed that the AO has wrongly noted that the cash deposit is in the City Union Bank, Mayiladuthurai whereas the cash deposit is only Rs.12,73,400/- in

the Karur Vysya Bank and not the AIR information showed at Rs.25,46,800/-. According to the Id.counsel, the AO has also estimated the gross profit on the other credit in the bank account of Rs.77,886/- @ 8% and quantified the income from business at Rs.6,230/-, which is without basis. Aggrieved, assessee preferred appeal before the CIT(A).

4. The CIT(A) also confirmed the action of the AO without giving any opportunity and taxing the same u/s.115BBE of the Act on account of cash deposits made during demonetization period by observing in para 7.6 as under:-

“7.6 Further, even during the course of present appellate proceedings, the assessee has failed to rebut the findings of the AO. The assessee did not file a valid Return of income for the year under consideration. The assessee merely stated that business receipts are the source of the cash deposits. However, she did not file any details of documentary evidence in support of her claim despite giving sufficient time and multiple opportunities during the course of present appellate proceedings. Under the circumstances, in the absence of any details or documentary evidence forthcoming from the assessee, I am of the considered opinion that the AO rightly made the impugned addition of Rs.17,28,500/- warranting no interference of the appellate authority. Thus, the ground raised by the assessee on this issue is dismissed.”

5. Now, the assessee only requested one more opportunity but when it was pointed out to the Id.counsel that the CIT(A) has fixed the appeal on various occasions and the order of AO also best

judgment assessment u/s.144 of the Act because assessee has not responded neither filed return of income u/s.139(1) or 139(4) of the Act but filed belatedly on 15.08.2019, which was declared as invalid and accordingly, assessment was completed u/s.144 of the Act. The Id.counsel only requested one more opportunity before the AO.

6. When these facts were confronted to Id. Senior DR, he strongly opposed setting aside the matter because the assessee was provided enough opportunity before AO as well as CIT(A) but she did not avail and she is a non-compliant assessee.

7. After hearing both the sides and going through the facts, I am of the view that no doubt the AO and the CIT(A) both provided reasonable opportunity of being heard but in the interest of justice and due to small assessee, let substantial justice be done and one more opportunity be provided to the assessee by the AO. Accordingly, the orders of the AO and that of the CIT(A) both are set aside and matter remanded back to the file of the AO with a 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 AO. In term of the above, the orders of the lower authorities are set aside and matter restored back to the file of the AO for fresh adjudication. Needless to say that the AO will allow reasonable opportunity of being heard to the assessee and assessee is also directed to represent her 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/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 21st 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. | |