

आयकर अपीलिय 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.: **1521/CHNY/2023**

निर्धारण वर्ष/Assessment Year: 2017-18

Shri Lakshman Ram,
No.140, Gandhiji Road,
Mayiladuthurai,
Nagapattinam – 609 001.

Vs. The Income Tax Officer,
Ward 2
Kumbakonam.

[PAN AABPL 8416G]

(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/250/2023-24/1058208408(1) dated 24.11.2023. 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 stated that the assessment framed by the AO is best judgment assessment passed u/s.144 of the Act, as the assessee could not represent before the AO and even the order of CIT(A) is ex-parte as the assessee could not appear before CIT(A), as opportunities were not provided or notices were not received. Hence, the Id.counsel for the assessee requested for setting aside of the orders of the authorities below i.e., of the AO and CIT(A) and remanding the matter back to the file of the AO for proper representation of facts. The Id.counsel admitted that there is cash deposit during demonetization period in demonetized currency of Rs.27,35,460/- and total cash deposit or entire credit in the bank account maintained with City Union Bank, Mayiladuthurai is amounting to Rs.1,18,18,205/- excluding the demonetized currency of Rs.27,35,460/- and the AO treated the balance cash as business receipts and estimate the profit rate @8% and added a sum of Rs.9,45,456/- as underreported business income. The AO also added the demonetized cash deposit of Rs.27,35,460/-.

3. Aggrieved, assessee preferred appeal before CIT(A) and the CIT(A) also confirmed the action of the AO for the reason that the assessee has filed only basic particulars i.e., statement of facts and

grounds of appeal before CIT(A) and nothing else. The CIT(A) recorded this fact 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, he did not file any details or documentary evidence in support of his 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.27,35,460/- warranting no interference of the appellate authority. Thus, the ground raised by the assessee on this issue is dismissed.”

4. When these facts were confronted to Id. Senior DR, he objected to setting aside of this appeal to the file of the AO for the reason that the AO as well as CIT(A) has provided many opportunities but the assessee did not avail for the reasons best known to him.

5. I have heard rival contentions and going through facts and circumstances of the case. I noted that the assessee was provided many opportunities by both the authorities below but assessee did not avail the opportunities but in the interest of natural justice and due to the case of small assessee, I am of the view that to do substantial justice one more opportunity be provided to the assessee to represent the true and clear facts before the AO and

hence, I set aside the orders of the lower authorities i.e., the AO and the CIT(A) and remand the matter 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 his 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 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. | |