

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.: **1553/CHNY/2023**

निर्धारण वर्ष/Assessment Year: 2017-18

**Shri Duraisamy Arun Prasath,**  
C/o. M/s. S. Sathyanarayanan,  
Advocates,  
F1, PRP Block – Rose Park,  
No.10, Santhi Nagar,  
1<sup>st</sup> Cross, Adambakkam,  
Chennai – 600 088.

**Vs. The Income Tax Officer,**  
Non-Corp Ward 4(2),  
Coimbatore.

**[PAN: BDAPA 6265R]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

:

Shri S. Sathyanarayanan,  
Advocate

प्रत्यर्थी की ओर से /Respondent by

:

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/250/2023-24/1057304808(1) dated 23.10.2023. The assessment was framed by the Income Tax Officer, Non Corporate Ward 4(2), Coimbatore for the assessment year 2017-18 u/s.144 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 26.12.2019.

2. At the outset, the Id.counsel for the assessee stated that the order of CIT(A) is ex-parte and that of the AO is of best judgment assessment framed u/s.144 of the Act, due to non filing of evidence of agricultural income of earlier years. The Id.counsel stated that practically both the orders i.e., of the AO and CIT(A) is ex-parte and without allowing opportunity of being heard to the assessee. For this, the Id.counsel drew my attention to ground Nos. b, c & d as under:-

b) The Learned AO failed to appreciate that facts and submissions made about the receipt of SBNs.

c) The Notice of hearing issued by the Learned CIT(A) was not aware of any is the email which hearing notice and that the email address arunfeather@gmail.com the assessee had no access to.

d) The Learned CIT(A) ought not to have passed orders on the appeal based on the presumption that the hearing notice is served on the Assessee.

3. Brief facts are that the assessee has not filed any return of income. The AO noticed from AIR information that the assessee has total credit entries of Rs.60,82,183/- in his bank account maintained with Axis Bank, Coimbatore during financial year 2016-17 (including cash deposit made of Rs.22,53,000/- during demonetization period in Specified Bank Notes [SBNs]). The AO required the assessee to explain the source of cash deposit in the bank including the demonetized currency deposited during demonetization period in SBNs. The assessee in reply to show-

cause notice dated 27.09.2019, filed reply vide dated 25.10.2019 through e-portal stating that the assessee is agriculturist and owning 7 acres of agricultural land. The assessee has given various details i.e, adangal plus chitta and details of agricultural crops grown and quantum of agricultural income. But the AO noted that assessee is an agriculturist and does farming in his own land as well as 11 acres of leased land. He does not have any other sources of income other than agricultural sources. He arrived agricultural income from his own land and 11 acres of leased land amounting to Rs.25.80 lakhs. The cash deposits are from the outstanding debtors who are his crop vendors. However, the assessee's claim of agriculture income is not supported by proper evidences like quantity yield of the agricultural produce, mode of sale and mode of receipt of sale value, copies of sales bills and address of the parties to whom the assessee has sold instead assessee uploaded only chitta, adangal, copy of documents in support of agriculture claim. Therefore, the AO added the cash deposit made during demonetization period amounting to Rs.22.53 lakhs as unexplained money u/s.69A of the Act and therefore, taxed u/s.115BBE of the Act. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) issued various notices but there was no compliance and hence, CIT(A) proceeded to pass ex-parte order and recorded following finding in para 6.9 & 6.10 as under:-

6.9 By his own act, the appellant has failed to remain vigilant and did not avail the opportunity to submit his point of view/contention, as he did not respond to various notices issued. The fact that the appellant did receive the order and filed the present appeal, but chose not to respond to any notices issued by this office clearly establish total disregard to the due process of law. Therefore, the conclusion that the appellant could not controvert the findings given by the AO on merits of the issue either is inescapable.

6.10 In view of the above, I am of the considered view that the Assessing Officer was justified in making addition of Rs. 22,53,700/- u/s 69A of the Act on account of unexplained cash deposits during the year, and accordingly, the grounds of appeal of the appellant no. 1 –4 are "Dismissed"

Aggrieved, assessee is in appeal before the Tribunal.

5. I have heard rival contentions and gone through facts and circumstances of the case. I noticed that the assessee cannot be said to be not aware of hearing notices on e-mail address because the assessee has already uploaded the documents even to the e-portal during assessment proceedings on 25.10.2019. But going by the facts that the assessee being agriculturist has filed details before the AO, which neither AO nor CIT(A) examined. Even the order of CIT(A) is practically for non-appearance of the assessee and not on merits. Hence, considering the facts of the case and

substantial justice to the assessee, I set aside the order of CIT(A) and that of the AO and remand the matter back to the file of the AO for fresh adjudication 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 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 21<sup>st</sup> February, 2024 at Chennai.

Sd/-  
(महावीर सिंह )  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,  
दिनांक/Dated, the 21<sup>st</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.        |                     |