

आयकर अपीलीय अधिकरण, 'बी' / SMC न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' /SMC BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT

आयकरअपीलसं./I.T.A.No.1420/Chny/2023

(निर्धारणवर्ष / Assessment Year: 2012-13)

Mr. Ashraf Ali, No.32A, Appamapattu Villupuram Road Konai Appampattu R V – 604 205. PAN: ASOPA 9718 K (अपीलार्थी/Appellant)	Vs	The Income Tax Officer, Ward-1, Villupuram. (प्रत्यर्थी/Respondent)
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अपीलार्थीकीओरसे/ Appellant by	:	Mr. B.Suresh, C.A.
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. D.Hema Bhupal, JCIT

सुनवाईकीतारीख/Date of hearing	:	21.02.2024
घोषणाकीतारीख /Date of Pronouncement	:	21.02.2024

आदेश / ORDER

This appeal filed by the assessee is arising out of order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi vide appeal No. ITBA/NFAC/S/250/2023-24 / 1055419495(1) dated 25.08.2023. The assessment was framed by the Income Tax Officer, National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2012-13 u/s.147 r.w.s 144B of the Income Tax Act, 1961 (hereinafter "the Act") vide order dated 20.09.2021.

2. The learned counsel for the assessee submitted that the appeal filed by the assessee is time barred by 37 days for which necessary petition for condonation of delay along with

affidavit explaining the reasons for the delay has been filed. The Ld. counsel further submitted that the assessee's wife was suffering from Covid-19 and admitted in Apollo Hospital. He has also narrated the details in affidavit which has not been controverted by the Ld. Senior DR . Hence, going through small delay and reasonable cause of assessee's wife illness, I condone the delay and admitted appeal for adjudication.

3. At the outset, learned counsel for the assessee stated that assessment framed by the Ld.AO is ex-parte and best judgement assessment u/s. 147 r.w.s 144B of the Act and the Ld.AO as simplicitor, without considering submissions of the assessee has made addition on cash deposits made by the assessee in his bank account amounting to Rs.35,46,156/- being cash deposited.

4. Aggrieved, the assessee preferred appeal before the Ld.CIT(A). Before the CIT(A) also there was no compliance by the assessee and hence, the CIT(A) dismissed the appeal for non-prosecution holding that grounds raised by the assessee and claimed that the assessee is running business of bulk vegetable vending by selling to retailers and others is not at all proved by any documentary evidence. The Ld.CIT(A)

recorded his finding in para 5.4 of his order, which reads as under:-

“5.4 Due to the non-compliant attitude of the appellant, the appeal has to be decided on merits and facts available on record. I have carefully perused the grounds of appeal, statement of facts and the assessment order to look for any fact which may be helpful in furthering the cause of the appellant, but could not find any. The A.O had made the addition specifically because the appellant failed to give any satisfactory explanation regarding the source of cash deposit, despite being provided with reasonable opportunity. Even during the present appellate proceedings, the appellant failed to any submission/ evidence whatsoever and chose to remain non-compliant. The facts stated in the grounds of appeal are very cryptic, vague and general in nature and do not come to rescue of appellant. The appellant has in the grounds of appeal has claimed to be running business of bulk vegetable vending by selling to retailers and others and of doing business through cash which was said to had been deposited cash at bank periodically. But the appellant has not provided even a primary and basic evidence about running any kind of business. Thus the appellant has not discharged the primary onus of explaining his case. The appellant has not produced any material to controvert the finding of A.O. on merits. Further, from the above conduct of the appellant, it is clear that the appellant is not interested in pursuing his appeal. In the event, I have no reason to interfere with the findings of the AO. **In view of these facts, I am of the opinion that no interference is called for in the AO's assessment order and therefore, the grounds of appeal are dismissed.”**

Aggrieved, the assessee came in appeal before the Tribunal.

5. I have heard rival contentions and gone through facts and circumstance of the case. The learned counsel for the assessee pleaded only mercy and stated that the CIT(A) fixed the appeal for hearing on four occasions, but the assessee could not file and could not answer notices as the same is

served through e-mail only. On the other hand, the Ld.CIT DR requested for upholding order of the Assessing Officer and that of CIT(A).

6. After hearing rival contentions, I notice that the assessee is totally non-compliant. But, order of the CIT(A) is also non-speaking. Hence, I am inclined to set aside order of the CIT(A) and that of the Assessing Officer and remand the matter back to the file of the Assessing Officer, subject to payment of cost of Rs.10,000/- to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras. Subject to the above condition that the assessee will pay cost of Rs.10,000/-, and produce receipt before the Assessing Officer. In term of the above, the matter is remitted back to the file of the Assessing Officer, who will decide the issue afresh, on merits in accordance with law. Needless to say that Assessing Officer will allow reasonable opportunity of being heard to the assessee and assessee is also directed to present his case as and when notice is issued, otherwise adverse view can be taken against the assessee.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21st February, 2024

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President

चेन्नई/Chennai,
दिनांक/Dated 21.02.2024
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त/CIT
4. विभागीय
- प्रतिनिधि/DR
5. गार्ड फाईल/GF.