

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथा. जी, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1300/Chny/2023

निर्धारण वर्ष / Assessment Year: 2015-16

Devaki Traders,
No. 54, 3rd Cross, Jawahar
Nagar, Boomianpet,
Puducherry – 605 005.

[PAN: AAJFD-1559L]

(अपीलार्थी/Appellant)

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

सुनवाई की तारीख/Date of Hearing

घोषणा की तारीख/Date of Pronouncement

v. Income Tax Officer,
Ward -1,
Puducherry.

(प्रत्यर्थी/Respondent)

: Shri. N. V. Lakshmi, Advocate
: Shri. Nilay Baran Som, CIT

: 21.02.2024

: 21.02.2024

आदेश / O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 27.10.2023 and pertains to assessment year 2015-16.

2. The brief facts of the case are that, the appellant is partnership firm engaged in the business of trading in tiles,

steel and cement. The appellant has not filed its return of income for the assessment year 2015-16. Therefore, the assessment has been re-opened u/s. 147 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and notice u/s. 148 of the Act, dated 30.02.2022 was issued and served on the assessee. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer called upon the assessee to file necessary evidences in respect of cash deposits into bank account and also interest income received from bank. In response, the assessee vide letter dated 10.11.2022 submitted that, source for cash deposits is out of cash receipts generated from retail sales. The assessee has also explained as to why it could not file return of income under provisions of section 139 of the Act. The Assessing Officer, after considering relevant submissions of the assessee and also taken note of relevant facts completed assessment u/s.147 r.w.s. 144B of the Act and determined total income of Rs. 3,25,39,440/-, by making various additions including additions towards cash deposits into bank account u/s. 68 of the Act. The assessee carried the matter in appeal before the first appellate authority, but neither appeared nor filed any details, even though the case was posted for hearing on three

occasions. However, on third occasion filed a petition seeking adjournment of hearing for 15 days. The Id. CIT(A), after considering the adjournment request filed by the assessee and also taken note of relevant facts dismissed appeal filed by the assessee, without considering adjournment petition and upheld additions made by the Assessing Officer towards cash deposits into bank account u/s. 68 of the Act. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

3. The Ld. Counsel for the assessee, referring to para 5 of Id. CIT(A) Order and more particularly adjournment letter dated 20.10.2023 submitted that, the assessee sought adjournment for 15 days by way of letter dated 20.10.2023. But, the Id. CIT(A) without granting adjournment passed order on 27.10.2023, by not providing sufficient opportunity to the assessee to file necessary details to justify its case. Therefore, the case may be set aside to the file of the Id. CIT(A) to give reasonable opportunity of hearing to the assessee.

4. The Id. DR, on the other hand supporting the order of the Id. CIT(A) submitted that, when the appellant filed appeal before the Id. CIT(A), it is the duty of the appellant to respond

to notices given by the appellate authority and file necessary details. In case the appellant does not comply with the notices, then the appellate authority has to dispose off the appeal on the basis of material available on record. In the present case, when appellant is not complying with the notices, the Id. CIT(A) dismissed appeal filed by the assessee and thus, there is no reason to give another opportunity to the assessee.

5. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Id. CIT(A) disposed off appeal filed by the assessee *ex parte*, without considering adjournment letter filed by the assessee dated 20.10.2023, seeking 15 days time to comply with notices issued by the Id. CIT(A) to justify its case, contrary to settled principle of law that. When the appellant seeking adjournment with a valid reason, it is the duty of the appellate authority to provide adjournment for the appellant to submit necessary details. Further, although the Id. CIT(A) has dismissed appeal filed by the assessee, but such appeal has been dismissed for non-appearance without discussing the issues on merits. Since, the Id. CIT(A) has not provided

sufficient opportunity to the assessee, in our considered view, the matter needs to go back to the file of the Id. CIT(A) to provide reasonable opportunity of hearing to the assessee. But, the assessee will get another opportunity before the first appellate authority, subject to payment of nominal cost of Rs. 10,000/- for failure to appear before the Id. CIT(A), when the appeal was called for hearing. Thus, we set aside the order of the Id. CIT(A) and restore the issue back to the file of the Id. CIT(A), subject to the condition that the assessee should pay Rs. 10,000/- cost to State Legal Aid Authority, Hon'ble High Court of Madras and produce proof of payment of cost to the Registry within 15 days from the date of receipt of this order.

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

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

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /Vice President

Sd/-
(मंजूनाथा. जी)
(MANJUNATHA. G)
लेखासदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 21st February, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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