

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' 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.: **1534/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2017-18

Kothandan Ravi,
199, Nehru Bazaar, Avadi,
Chennai – 600 054.

[PAN: ASRPR-5427-M]

(अपीलार्थी/Appellant)

v. Deputy Commissioner of
Income-tax,
Non-Corporate Circle -7(1),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. S. Sree Lakshmi Valli, 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

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 15.11.2023 and pertains to assessment year 2017-18.

2. The brief facts of the case are that, the assessee is an individual filed its return of income for the assessment year 2017-18 on 19.03.2018, declaring total income of Rs.

15,69,510/-. The case was selected for scrutiny to verify large cash deposits during demonetization period. During the course of assessment proceedings, the Assessing Officer called upon the assessee to file necessary evidences to prove source for cash deposits into bank account. In response, the assessee submitted that, source for cash deposit is out of sale proceeds of the relevant assessment year. The Assessing Officer, however was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the assessee could not explain source for cash deposits during demonetization period and thus, made additions of Rs. 32,06,500/- u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The Assessing Officer, had also made additions of Rs. 10,32,691/-, being 30% of expenditure debited under the head 'interest for non-deduction of TDS' under respective provisions of the Act.

3. Aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee neither appeared nor filed any details, which is evident from Para 2 of Page 3 of Id. CIT(A) order, where the Id. CIT(A) has provided five dates of hearing, but no

compliance from the assessee. Therefore, the Id. CIT(A) disposed off appeal filed by the assessee ex parte and upheld additions made by the Assessing Officer towards cash deposits u/s. 68 of the Act and disallowance of expenses u/s. 40(a)(ia) of the Act, for non-deduction of tax at source under Chapter XVIIB of the Act. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, submitted that the Id. CIT(A) dismissed appeal filed by the assessee ex parte, without considering adjournment petition filed by the assessee to seek some time to file necessary details to justify the case. Therefore, he submitted that the matter may be set aside to the file of the Id. CIT(A) to give another opportunity of hearing to the assessee to explain its case.

5. The Id. DR, on the other hand supporting the order of the Id. CIT(A) submitted that, the assessee could not avail sufficient opportunities provided by the first appellate authority to explain its case. Therefore, there is no reason to set aside the appeal to the file of the Id. CIT(A). He further submitted that, in case the assessee should get one more opportunity of

hearing, then subject to payment of nominal cost the matter may be set aside to the file of the Id. CIT(A).

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, the assessee is non-cooperative at all stages of proceedings, which is evident from exparte assessment order passed by the Assessing Officer and exparte appellate order passed by the Id. CIT(A). Further, the appellant could not explain proper reasons for non-appearance before the Assessing Officer and Id. CIT(A). From the above, it is undoubtedly clear that, assessee is very casual in his approach before the authorities and said approach cannot be appreciated. Further, although the Id. CIT(A) has disposed off appeal filed by the assessee, but such appeal has been dismissed on technical grounds, without considering the issue on merits. It is a well settled principle of law by the decisions of various courts that, even in a case of appeal being disposed off for non-prosecution of the appellant, the said appeal should be disposed off on merits, on the basis of material available on record. Since, the Id. CIT(A) has dismissed appeal filed by the assessee without considering the issue on merits, in our

considered view the assessee deserves one more opportunity of hearing before the CIT(A). But, the assessee should get another opportunity subject to payment of nominal cost for non-serious in prosecuting its case before the authorities. Thus, we set aside the order passed by the Id. CIT(A) and restore the issue back to the file of the CIT(A) to give one more opportunity of hearing to the assessee to substantiate its case with necessary evidences. The assessee is directed to pay nominal cost of Rs. 5,000/- to State Legal Aid Authority, Hon'ble High Court of Madras and produce necessary proof of payment to the Registry within 15 days from the date of this order.

7. 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