

आयकर अपीलीय अधिकरण, बी 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./I.T.A. No. 1583/CHNY/2023
निर्धारण वर्ष/Assessment year : 2017-2018

Babu Velu,
No.342, CTH Road,
Pattabhiram,
Chennai 600 072.

Vs. The Income Tax Officer,
Non Corporate Circle 9(1)
Chennai 600 034.

[PAN ACLPV 1900D]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri. Anandd Babunath, C.A.
: Shri D. Hema Bhupal, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 21.02.2024

घोषणा की तारीख /Date of Pronouncement

: 21.02.2024

आदेश/ ORDER

This appeal by assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in Order No.ITBA/NFAC/S/250/2023-24/1057257970(1), dated 20.10.2023. The assessment was framed by the Income Tax Officer, Non Corporate Circle 9(1), Chennai for the assessment year 2017-2018, u/s.144 of the Income Tax Act, 1961 (in short 'the Act') vide order dated 07.12.2019.

2. At the outset, it is noticed that the appeal filed by the assessee is barred by limitation by eight days. The order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi dated 20.10.2023 was communicated to the assessee on 20.10.2023 as per Form 36. The appeal has to be filed on or before 19.12.2023 but was filed only on 27.12.2023. The assessee has filed affidavit for condonation of delay stating the following reasons:-

'5. That, I am being issued a letter by Assistant Commissioner of Income-tax, Non-Corporate Circle 7(1) Chennai asking for the payment of balance demand vide its letter dated 22.12.2023 vide DIN NO. ITBA/COM/F/17/2023- 24/1058993956(1), along with the information of dismissal of the Appeal before the CIT(A) vide order DIN No: ITBA/NFAC/S/250/2023- 24/1057257970(1). As it was served on me through the ITBA and was aware of the service of hearing notices as well the disposal of the Appeal on 20.10.2023. The Appeal before the Hon'ble ITAT, Chennai ought to have been filed on or before 19.12.2023.

6. That only on 22.12.2023, upon receipt of the letter in the message of phone, I realized that the appeal before the Hon'ble ITAT, Chennai, owing to the reasons stated above could not be filed and I immediately took steps to file the appeal before the Hon'ble ITAT, Chennai".

When this was confronted to Id. Senior Departmental Representative, he has not objected for condonation of delay. Hence, I condone the delay and admit the appeal for adjudication.

3. Brief facts of the case are that assessee is an individual engaged in the business of services of cosmetology (beauty parlour). It was found

that assessee had made cash deposits of Rs.11,26,000/- during the demonetization period in the Axis Bank account Rs.11,06,000/- and HDFC Bank account Rs.20,000/-. The Id. Assessing Officer found that assessee did not file his return of income for the assessment year 2017-18 within the due date. A notice u/s.142(1) of the Act was issued to the assessee on 09.03.2018 directing to file the return of income on or before 31.03.2018. The assessee filed belated return of income in response to notice issued u/s.142(1) of the Act on 09.04.2018 declaring a total income of Rs.5,30,120/-. The Id. Assessing Officer noted that in column no.13 (a) & 13 (b) of return of income filed, assessee did not provide any details regarding cash deposits of Rs.11,26,000/-. A notice u/s.143(2) of the Act dated 30.09.2019 was issued to the assessee which was duly served. Further, a notice 142(1) of the Act dated 25.10.2019 was also issued alongwith questionnaire and the same was duly served on the assessee. Since there was no compliance from the assessee's side, the Id. Assessing Officer added a sum of Rs.11,26,000/- as unexplained money u/s.69A of the Act to the total income of the assessee. Aggrieved, assessee preferred an appeal before the Id. CIT(A).

4. The CIT(A) also confirmed the action of the AO for the reason that the assessee has not filed any reply to the notices issued. Aggrieved, assessee preferred an appeal before the Tribunal.

5. Now before me, the Id.counsel for the assessee submitted that the assessment was framed ex-parte and best judgment assessment u/s.144 of the Act assessing the cash deposits made by assessee amounting to Rs.11,26,000/- as unexplained money and hence he requested to setting aside the appeal to the file of the Id. Assessing Officer.

6. When these facts were confronted to Id. Senior Departmental Representative, he objected to setting aside of this appeal to the file of the Assessing Officer 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.

7. I have heard rival contentions and gone 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, 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.10,000/- to be paid to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras on or before 26.04.2024. 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.

8. In the result, the appeal of the assessee in ITA No.1583/Chny/2023 for assessment year 2017-2018 is allowed for statistical purpose.

Order pronounced in the open court at the time of hearing on 21st day of February, 2024, at Chennai.

Sd/-
(महावीरसिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/**VICE PRESIDENT**

चेन्नई/Chennai

दिनांक/Dated:21 .02.2024.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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