

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1437/Chny/2023
निर्धारण वर्ष/Assessment Year: 2017-18

Ms. Suresh Babu S. Yamuna,
No.2692, TNHB Colony,
B-Type, Avadi,
Chennai-600 054.

v.

The Asst. Commissioner-
of Income Tax,
Non-Corporate Ward-7(1),
Chennai-600 034.

[PAN: AWWPS 7194 N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

:

Shri D. Anand, Advocate

प्रत्यर्थी की ओर से /Respondent by

:

Shri D. Hema Bhupal, JCIT

सुनवाईकीतारीख/Date of Hearing

:

27.03.2024

घोषणाकीतारीख /Date of

Pronouncement

:

27.03.2024

आदेश / ORDER

PER MANJUNATHA.G, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre, Delhi, dated 27.10.2023, and pertains to assessment year 2017-18.

2. The brief facts of the case are that the assessee Ms.S.Yamuna is an individual and filed her return of income for AY 2017-18 on 09.05.2017

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declaring a total income of Rs.23,58,080/-. The case was selected for scrutiny and during the course of assessment proceedings, the AO noticed that during the year under consideration, the assessee had sold a property along with her husband for a sum of Rs.7 Crs. and computed Long Term Capital Gains and claimed deduction u/s.54 of the Act. The AO after considering relevant details observed that the property sold by the assessee is a commercial property and thus, re-investment of capital gains for purchase of another housing property, is not eligible for deduction u/s.54 of the Act, and thus, rejected exemption claimed by the assessee u/s.54 of the Act, and computed Long Term Capital Gains of Rs.1,52,68,833/-. Since, the assessee has already offered Long Term Capital Gains of Rs.23,58,080/-, the difference amount of Rs.1,29,10,753/- has been added to total income.

3. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee neither appeared nor filed any details which is evident from Para No.4 of the order of the Ld.CIT(A), where the Ld.CIT(A) had given various dates of hearing to the assessee to file details, but no response from the assessee. Therefore, the Ld.CIT(A) disposed off appeal filed by the assessee **ex parte** on the basis of materials available on record and sustained the additions made by the AO towards computation of Long Term Capital Gains from sale of property. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

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4. The Ld.Counsel for the assessee, Shri D. Anand, Advocate, submitted that the First Appellate Authority has passed **ex parte** order for non-appearance of the assessee and decided the issue without considering the facts on merits. Therefore, he submitted that the matter may be set aside to the file of the Ld.CIT(A) to give one more opportunity of hearing to the assessee.

5. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted when the assessee is not responding to notices, the First Appellate Authority has left with no choice but to dispose off appeal filed by the assessee on the basis of materials available on record, and thus, there is no need to give one more opportunity of hearing to the assessee, and thus, the appeal filed by the assessee may be dismissed.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to fact that the assessee is not appeared before the Ld.CIT(A) when the appeal was posted for hearing which is evident from Para No.4 of the order of the Ld.CIT(A), where, the First Appellate Authority had given number of opportunities, but no response from the assessee. Therefore, we do not find fault with the **ex parte** order passed by the First Appellate Authority when there is no cooperation from the assessee. But, fact remains that the First Appellate Authority has disposed off appeal filed by the assessee on technical grounds without considering the issues on merits. It is a well settled principle of law by the decision of

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various courts that even in a case non-appearance of the assessee, the appeal disposed off, but such appeal should be disposed off on merits on the basis of materials available on record. In the present case, the Ld.CIT(A) dismissed the appeal filed by the assessee for non-prosecution without discussing the issues on merits. Therefore, we are of the considered view that the Ld.CIT(A) is erred in not deciding the issues raised by the assessee in their appeal on merits. Thus, we set aside the order of the Ld.CIT(A) and restored the issues back to the file of the Ld.CIT(A) to give one more opportunity of hearing to the assessee to explain its case. Further, the assessee is not serious in prosecuting their case before the authorities which cannot be appreciated and also the assessee cannot go scot free. Therefore, appeal is set aside to the file of the Ld.CIT(A) subject to payment of cost of Rs.5,000/- to State Legal Aid Authority, the Hon'ble Madras High Court and produce necessary proof of payment of cost to the office of the Ld.CIT(A).

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

Order pronounced on the 27th day of March, 2024, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 27th March, 2024.

TLN

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF