

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 1479/CHNY/2023

निर्धारण वर्ष /Assessment Year: 2017-2018

Anil Fireworks Factory,
5, AVT, Padasalai Street,
Sivakasi,
Virudhunagar Dist 626 123.

The Assistant Commissioner of
Income Tax,
Circle 1,
Virudhunagar.

PAN: AABFA 7742C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri S. Kumarasubramanian, Advocate
Shri D. Hema Bhupal, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 09.04.2024

घोषणा की तारीख/Date of Pronouncement : 09.04.2024

आदेश /ORDER

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in order No.ITBA/NFAC/S/250/2023-24/1056276261 (1) dated 19.09.2023. The assessment was framed by the Assistant Commissioner of Income Tax, Circle 1, Virudhunagar, for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 21.12.2019.

2. At the outset, it is noticed that this appeal by assessee is barred by limitation by 26 days. The assessee received the impugned appellate order on 19.09.2023 and appeal was to be filed on or before 18.11.2023 but actually it was filed on 14.12.2023 thereby there was a delay of 26 days. The assessee has filed condonation petition stating the reason that the assessee have handed over papers relating to filing of appeal to an Auditor and the Auditor on one pretext or others has not perused the matter and on realizing the same, assessee had approached an Advocate at Madurai who have facilitated in filing the appeal, thereby there is a delay of 26 days. When this was confronted to the Id. Senior Departmental Representative he has not objected for condonation of delay. Hence, we condone the delay and admit the appeal.

3. Brief facts of the case are that assessee is a partnership firm engaged in business of manufacture and sale of fireworks. Assessee filed its return of income for the relevant assessment year 2017-2018 on 28.09.2017 declaring a total income of Rs.2,10,46,040/-. The assessing officer selected the case for scrutiny and noticed that the assessee made cash deposits of the demonetized currencies of SBN in the bank accounts to the extent of Rs. 2,63,54,500/- into TMB Ltd., and Rs.1,06,31,000/- into Axis Bank Ltd., and the total amount aggregated to Rs.3,69,85,500/-. The assessee explained

that the cash deposits were made by the customers of the assessee directly in the bank accounts of the assessee towards pending dues or as advance and furnished the names and addresses of the customers in different parts of India, who made cash deposits of SBN. After examining all the details, the assessing officer held that deposits of SBN by the customers directly in the bank account of the assessee was not a legally accepted transaction and therefore added the entire deposits. The assessee contended that it was a legally accepted transaction as per Rule 2(v) of the scheme of demonetization. It was also pointed out that the assessee had given authorization to the customers and the customers filed proof of identity with the bank and therefore the source for the deposit of SBN can be examined only in the hands of the depositors and not in the case of the assessee. However, the assessing officer did not accept the contention of the assessee and added the entire cash deposits of SBN at Rs 3,69,85,500/- towards unaccounted income under section 68 on the ground that SBN cannot be used for any purpose other than exchanging. 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 us.

5. Now before us, the Id. Counsel for the assessee submitted that the order of CIT(A) i.e., final disposal is practically for non-prosecution and just simpliciter confirmed the action of the Id. Assessing Officer and he requested to setting aside the appeal to the file of the Id. CIT(A).

6. When these facts were confronted to Id. Senior Departmental Representative, he objected to setting aside of this appeal to the file of the Id. CIT(A) for the reason that the CIT(A) has provided many opportunities but the assessee did not avail for the reasons best known to him.

7. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee was provided many opportunities by the Id. CIT(A) but assessee did not avail the opportunities but in the interest of natural justice, we are 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 Id. CIT(A) and hence, we set aside the order of the CIT(A) and remand the matter back to the file of the Id. CIT(A) with a cost of Rs.25,000/- to be paid to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras on or before 15.05.2024. The assessee will pay this cost and produce the receipt before the Id. CIT(A). In term of the above, the order of the Id. CIT(A) is set aside and matter restored back to the file of the Id. CIT(A) for fresh adjudication. Needless to say that

the Id. CIT(A) will allow reasonable opportunity of being heard to the assessee and assessee is also directed to represent its case as and when notice is issued, otherwise adverse view can be taken against the assessee.

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

Order pronounced in the open court at the time of hearing on 9th April, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 9th April, 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.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT