

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

**माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM**

**आयकरअपील सं./ ITA No.1257/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2016-17)**

Crimson Dawn Apartment Owners
Welfare Association,
No.1, Crimson Dawn Apartment,
Nava India Road,
Peelamedu,
Coimbatore 641 004.

Vs. The Income Tax Officer,
Non Corporate Ward 1,
Coimbatore

[PAN: AABAC 6320R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri. N. Arjun Raj, Advocate
: Shri. ARV Srinivasan, IRS, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 09.05.2024

घोषणा की तारीख /Date of Pronouncement

: 15.05.2024

आदेश / ORDER

MANU KUMAR GIRI (Judicial Member)

The instant appeal filed by the assessee is directed against the order dated 21.09.2023 passed by the NATIONAL FACELESS APPEAL CENTRE (NFAC), Delhi, arising out of the rectification order dated 06.12.2021 passed u/s 154 r.w. section 143(1) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') by the ITO for Assessment Year 2016-17.

2. The brief facts leading to the case is that the Assessee is an apartment owners welfare association. The assessee had filed its return of income u/s 139 of the Act claiming complete exemption of its net surplus income of Rs.13,79,257/-. However, in an intimation issued u/s 143(1) of the Act dated 14.06.2018 by A.O., CPC, Bengaluru, the entire surplus of Rs.13,79,257/- was assessed under the head 'Income from business or profession'.

3. Aggrieved by the order of intimation u/s 143(1) of the Act dated 14.06.2018, appellant filed a petition u/s.154 of the Act dated 20.06.2018 before the A.O. and requested to treat the total income at Rs.Nil. The A.O. acceded to the prayer of the assessee, consequently passed order u/s 154 of the Act dated 26.11.2021.

4. To utter surprise to the appellant, A.O. again passed order u/s 154 dated 06.12.2021 and held as under:

"The assessee is a Resident Welfare Association and interest has been earned out of fixed deposits made from the surplus of subscription made by the residents. Whether interest on FS is taxable or exempt is a debatable issue and does not fall under the purse of Section 154. Hence rectification filed by the assessee is rejected.

The order u/s.154 dated 27.11.2021 has been passed inadvertently and the same is withdrawn".

5. Aggrieved against the order u/s 154 of the Act dated 06.12.2021, the assessee preferred appeal before Ld.CIT(A), who after considering the

submissions, sustained the view of the A.O. and dismissed the appeal of the assessee. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Before us, the Id. Counsel for the Assessee submitted that the impugned order was passed without issuing notice to assessee and that too in violation of section 154(3) of the Act, therefore, liable to be set aside.

7. Per contra, Id. Addl CIT-DR, supported the orders of the lower authorities.

8. We have heard both the parties and perused the records. We are of considered view that the said action on the part of the Assessing Officer (AO) had an adverse bearing and impact on the interest of the Appellant. Section 154(3) clearly envisages that in the event of effect of rectification resulting in an enhancement of assessment, reducing a refund, or increasing the liability of assessee, it is incumbent upon AO to issue a notice to the assessee and grant reasonable opportunity of hearing before the order of rectification passed. The said provision has to be read in a manner where it means that, in the event of any order which has a detrimental effect upon the assessee in those circumstances, firstly a notice and secondly, a reasonable opportunity of hearing becomes mandatory. Since assessee would saddle with an increased liability, the AO was required to issue notice and grant a reasonable hearing

before passing the order. Looking to the entire conspectus of matter, we deem it proper to set aside the impugned order dated 21.09.2023 and remit this matter back to A.O. to decide the issue whether interest on FS is taxable or exempt after giving proper opportunity of being heard to appellant.

9. In the result, appeal of the assessee in ITA No.1257/Chny/2023, for assessment year 2016-2017 is allowed for statistical purpose.

Order pronounced on 15th day of May, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated : 15-05-2024

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