

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **248/CHNY/2024**

निर्धारण वर्ष/Assessment Year: 2012-13

Shri P V Jayaraman,
90, Suganapuram,
Kuniamuthur Post,
Kovaipudur,
Coimbatore – 641 008.

**The Deputy Commissioner
of Income Tax,**
Vs. Central Circle-1,
Coimbatore.

PAN: ACTPJ 5248C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri B. Rama Krishnan, FCA
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 28.05.2024
घोषणा की तारीख/Date of Pronouncement : 28.05.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

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/250/2023-24/1052646323 (1) dated 08.05.2023. The assessment was framed by the Deputy Commissioner of Income Tax, Central Circle-1, Coimbatore for the assessment year 2012-13 u/s.143(3) of the

Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 29.03.2015.

2. At the time of hearing, it is noticed that this appeal is barred by limitation by 206 days. The facts of the case are that the order by CIT(A)-NFAC is dated 08.05.2023. As per Form 36, the assessee has received this order on 08.05.2023 and appeal should have been filed on or before 07.07.2023 but appeal was actually filed on 29.01.2024 and thereby, there is a delay of 206 days. The assessee filed petition for condonation of delay supported by affidavit stating the reason that the assessee being a sitting MLA from Pollachi Constituency, was held up with attending the legislative assembly sessions and public welfare works in the constituency. The assessee also stated another reason that he was unaware about any notices or order served through mail id and he was under the impression that the notices would be received through registered post as the appeal was filed manually. It was argued by Id.AR for the assessee that this was a transition period of adoption of technology and service of notice through e-mail. Hence, he requested the Bench to condone the delay. When this was put to Id. Senior DR, he could not controvert the above fact situation. After hearing rival contentions and going through the condonation petition and reasons stated

therein and also supported by affidavit that this being a transitional period and assessee was unaware of service of order through e-mail and he was under impression such order will be received through registered post and accordingly a decision is to be taken, hence there was a delay of 206 days in filing of appeal. We find the reason stated by assessee as reasonable and sufficient and hence, we condone the delay and admit the appeal.

4. The first issue in this appeal of assessee is as regards to the order of CIT(A)-NFAC confirming the action of the AO in estimating the lower rate of agricultural produce and thereby estimating addition of Rs.5,64,000/- and assessed the same as 'income from other sources'. For this, assessee has raised the following Ground No.2:-

2. The Learned CIT (A) had erred in accepting the Assessing Officer's standpoint of assessing the sales consideration received for agricultural produce on an estimate basis and making an addition of Rs. 5,64,000/- under Income from Other Sources.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO noted in his assessment order that the assessee claimed that his farm has 3000 crop yielding coconut trees and apart from that he has also tender

coconut trees of 900 Nos. and the rest are regular trees. The AO noted that the assessee has computed net agricultural income at Rs.32.50 lakhs as under:-

“Tender Coconut Trees (Hybrid variety from Cholavandan) – Per tree 200 nuts per annum @ Rs.11.5 – tender coconut. The sale realization is Rs.2,300 – per tree. For 900 trees the sales realization is Rs.20,70,000

Regular Coconut Trees : 2100 Nos Per tree 140 nuts per annum @ Rs.5.5/- per nut. The sales realization is Rs.770/- per tree. For 2,100 trees the realization is Rs.16,17,000/-

Total sales realization Rs.36,87,000

Less : Expenses 4,37,000

Net agricultural income Rs.32,50,000”

According to AO, the assessee has not maintained proper records for agricultural produce or sales and hence, he computed the price of tender coconut of 200 nuts per annum at an average of Rs.11.5 per nut, which is on the higher side and hence as against the AO has taken average price at Rs.10. Therefore, he treated the excess income of Rs.2.70 lakhs as 'income from other sources'. Similarly, the average price of normal coconut is taken at Rs.5.5 per nut, which is also on higher side and hence, the AO has taken the estimated price at Rs.4.5 per unit. Therefore, he also computed excess agricultural income claimed at Rs.2.94 lakhs. Therefore, the AO computed the excess agricultural income claimed by the

assessee at Rs.5.64 lakhs and the AO treated the same as 'income from other sources'. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A)-NFAC also confirmed the action of the AO on the same reasoning.

6. We noted that the AO has simpliciter made addition without any basis that how he has reached to an average price of tender coconut per unit at Rs.10 as against claimed by assessee at Rs.11.5. Similarly, as regards to normal coconut, the assessee has taken the price per nut at Rs.5.5 whereas the AO has taken at Rs.4.5 simpliciter that the average price of normal coconut adopted by assessee is on higher side but the AO has not given any basis for computing the price but he just made an estimate. We after hearing both the sides are of the view that simpliciter estimation without any basis has no legs to stand. Hence, we delete the addition and allow this issue of assessee's appeal.

7. The next issue in this appeal of assessee is as regards to the order of CIT(A)-NFAC confirming the action of the AO in assessing the amount received during the occasion of wedding of assessee's son as gift from various people and assessing the same as unexplained cash credit u/s.68 of the Act amounting to

Rs.20,84,760/-. For this, assessee has raised the following Ground Nos.3 & 4:-

3. The Learned CIT(A) ought not to have confirmed the invoking of provisions of section 68 of the Income Tax Act, 1961 by the assessing officer without considering the fact that the amount received during the occasion of the wedding of the appellant's son.

4. The Learned CIT (A) erred in confirming the AO's action who failed to appreciate the fact that the amount received during the wedding of appellant's son was Customary in nature and was held by the appellant on behalf of his son under trust.

8. We have heard rival contentions and gone through facts and circumstances of the case. Admittedly, the AO noted that allegedly gift received by assessee's son and found in the books of accounts is unexplained credit amounting to Rs.20,84,766/- and added u/s.68 of the Act. The claim of the assessee is that these are 'MOI' receipts on the occasion of the wedding of his son that was celebrated during the previous year relevant to assessment year 2012-13. The assessee claimed that he is a sitting MLA for the third time running and is holding a respectable position and has lot of friends and followers in his personal life as well as in public life. Hence, his son has received wedding gifts from members of the family, friends, well-wishers and relatives. Hence, he stated that these gifts are exempt from tax. As the assessee could not offer explanation or

explanation offered by his is not, in the opinion of the AO satisfactory, the sum so credited was charged to Income-tax u/s.68 of the Act. The CIT(A)-NFAC also confirmed the action of the AO without much discussion.

9. Now before us, the assessee filed complete list of amounts received in its additional evidence petition numbering into 43 pages, wherein he has disclosed the amount received from various persons. The assessee has submitted the list of persons who has given cash gifts on the occasion of his son's marriage for a sum of Rs.18,00,002/- in toto with line-item wise details of name, address, amount of cash gift, contact number and PAN as and where available. The assessee has also provided extract of the note book maintained for recording the cash gifts received at the time of marriage. When these were confronted to Id. Senior DR, he stated that these are additional evidence and he opposed admissibility of additional evidence. Since these are new evidences which are vital for deciding the issue and assessee has produced complete name and address in the list and amount received being cash gifts, we after admitting these evidences, set aside the issue to the file of the AO. The AO is directed to consider these evidences and verify the

evidences and then decide this issue afresh. In term of the above, we allow this issue of assessee's appeal for statistical purposes.

10. 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 28th May, 2024 at Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 28th May, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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