

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' 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.601/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2015-16)

Singaravel Raja,
5/459, Pandur Village Main Road,
Pandur P.O.
Ulundurpet T.K.
Villupuram 606 102.

Vs. The Income Tax Officer, Ward -1,
Villupuram.

[PAN: AOPR 0652P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Ms. Nidhi D. Jain, C.A.
: Shri. S. Easwar, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 20.05.2024

घोषणा की तारीख /Date of Pronouncement

: 29.05.2024

आदेश / ORDER

PER MANU KUMAR GIRI (Judicial Member)

This Income Tax Appeal filed by the assessee is directed against the order No. ITBA/NFAC/S/250/2023-24/1061238550 (1) dated 21.02.2024 of the Ld. Commissioner of Income Tax(Appeal)(NFAC) Delhi [CIT(A)] for Assessment Year 2015-16.

2. The brief facts of the case are that assessee's case was reopened u/s 148 of the Income Tax Act, 1961 (In short 'the Act') on the basis of the information

flagged in accordance with the risk management strategy formulated by CBDT. As per information, the appellant had made cash deposits to the tune of Rs.22,35,000/- and time deposit to the tune of Rs.49,50,000/- in VDCC KVB, Ulundurpet. In response to notice u/s 148 of the Act, the assessee for first time has filed return of income for A.Y.2015-16 wherein assessee has shown his nature of business as a real estate contractor-Commission income and shown a turnover of Rs.22,35,000/- and income of Rs.1,78,800/-. During the course of assessment proceedings, assessing officer (In short 'AO') asked explanation from assessee in respect of cash deposits to the tune of Rs.22,35,000/- and time deposit to the tune of Rs.49,50,000/- in VDCC KVB, Ulundurpet. One perusal of the reply of the assessee, AO observed that assessee has failed to substantiate its claim with supporting documents. Accordingly the assessment was completed on 13.03.2023 u/s 147 read with section 144B of the Act and made an addition of Rs.71,90,000/- treating deposits from undisclosed sources u/s 69A.

3. Being aggrieved by the assessment order dated 13.03.2023, the assessee preferred an appeal before the Ld.CIT(A). The Ld.CIT(A) has dismissed the appeal as infructuous and observed in para 3.5 of its order as under:

''3.5. Though the appellant has offered 'No' comments at sl. No. 9 of Form-35, it was asked vide DIN & letter no. ITBA/NFAC/F/APL_1/2023-24/1060440475(1) dated 02.02.2024 to intimate whether it has made payment of tax-which includes element of advance tax also and date of compliance was fixed for 09.02.2024 but the appellant failed to contradict the information given at sl. no. 9 of Form-35 and to prove that it has made payment of amount equal to the advance tax which was due on its income. It is, therefore, clear that information, given at sl. no. 9 of Form-35 is correct and the appellant has not made payment of amount equal to the advance tax which was due on its income. The appellant has also not requested for exemption

from operation of the provisions of clause (b) of sub-section (4) of section 249 of the Act''.

Ld.CIT(A) further observed that since the appellant has not filed return of income as well as not paid an amount equal to the amount of advance tax which was payable by it in the light of section 249(4) read with section 234B(1) and section 208 of the Act.

4. On further appeal before us, Ld. Counsel submitted that Ld.CIT(A) has not properly adjudicated the matter and he grossly erred stating that the appellant has not filed return of income. Ld.Counsel further submitted that Ld.CIT(A) grossly ignored the fact that Appellant has filed return of income under section 148 on 08.04.2022 and the same has been duly reported in Form 35 under point 8 and 8.1. Ld. Counsel furthermore, submitted that no intimation sent by Ld.CIT(A) dated 02.02.2024 was received by the appellant. Hence prayed for set aside the matter before Ld.CIT(A) for fresh adjudication.

5. The Ld. DR, Shri S. Easwer, JCIT supported the order of Ld.CIT(A). He further submitted that there is no infirmity in the order of Ld.CIT(A).

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The facts borne out from the assessment order and submissions put forth by the Ld.Counsel clearly indicate that Ld.CIT(A) missed to read the Form 35 under point 8 and 8.1. We further observed that the assessment order dated 13.03.2023 clearly records filing of return of income by the appellant. Therefore, we do find infirmity in the impugned order of Ld.CIT(A) invoking section 249(4) read with section 234B(1) and section 208 of the Act and

dismissing the appeal as infructuous. Further, we are of the considered opinion that in the interest of justice, the case requires adjudication afresh by Id. Assessing Officer so that assessee can substantiate explanation for cash deposit with cogent evidence, if any. Therefore, we deem it fit to restore back the appeal to Id. Assessing Officer for denovo adjudication after affording reasonable opportunity of hearing to the assessee subject to cost of Rs.5,000/- which shall be deposited by assessee within thirty days from the date of receipt of this order to 'Tamil Nadu Stage Legal Services Authority' at Hon'ble High Court of Madras. The proof of the receipt will be furnished by the assessee to Id. Assessing Officer who shall proceed for denovo adjudication of cash deposit of Rs.71,90,900/- The assessee is directed to substantiate its case forthwith failing which Id. Assessing Officer shall be at liberty to proceed with disposal of appeal on merits.

7. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29th day of May, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated :29-05-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai, Coimbatore, Madurai, Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

लेखा सदस्य / ACCOUNTANT MEMBER न्यायिक सदस्य / JUDICIAL MEMBER