

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.: **112/CHNY/2024**

निर्धारण वर्ष/Assessment Year: 2010-11

Shri Nallasamy Mohanraj,
23, Bhajan Street, Nadupalayam,
Vellottamparappu Post Office,
Erode – 638 154.

The Income Tax Officer,
Ward 2(3),
Erode.

PAN: AOZPM 4517R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S.Sridhar, Advocate (Erode)
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 06.06.2024
घोषणा की तारीख/Date of Pronouncement : 06.06.2024

आदेश / O R D E R

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/250/2023-24/1058160395 (1) dated 23.11.2023. The assessment was framed by the Assistant Commissioner of Income Tax, Ward-2(3), Erode for the assessment year 2010-11 u/s.144 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 31.12.2018. The impugned

draft penalty order under dispute was passed by the Income Tax Officer, Ward 2(3), Erode u/s.271(1)(c) of the Act, vide order dated 26.06.2019.

2. At the outset, the Id.counsel for the assessee filed copy of Tribunal order in quantum appeal in ITA No.111/CHNY/2024 for assessment year 2010-11, order dated 07.05.2024, wherein the Tribunal has remanded the matter in quantum appeal back to the file of the AO. The relevant finding of Tribunal reads as under:-

“2. Though the assessee has remained negligent, however, keeping in mind the principle of natural justice, we deem it fit to grant another opportunity to the assessee to substantiate its case. Accordingly, the matter is restored back to learned AO for de novo assessment after affording reasonable opportunity of hearing to the assessee. The assessee is directed to substantiate its case forthwith failing which Ld. AO shall be at liberty to proceed with assessment on merits on the basis of material on record. The Ld. Sr. DR has pleaded for imposition of cost However, considering the background of the assessee, the bench is not inclined towards the same.”

3. The Id.counsel for the assessee stated that the present penalty levied by AO u/s.271(1)(c) of the Act is arising out of the quantum of addition of cash deposit and certain addition under the head capital gains was restored back to the file of the AO. The Id.counsel stated that in present on quantum addition, neither AO order nor CIT(A)-NFAC order survived after the order of the Tribunal. Hence, he argued that penalty levied by AO u/s.271(1)(c) of the Act and

confirmed by CIT(A)-NFAC will not survive. When these facts were confronted to Id. Senior DR, he could not controvert the above fact situation.

4. After hearing both the sides and going through the facts of the case that the quantum appeal is set aside by Tribunal by setting aside the order of AO as well as CIT(A)-NFAC and remanded back to the file of AO for fresh adjudication, it means that there is no assessment order. Once assessment is set aside, penalty will not survive. Hence, we quash the penalty order. However, the AO is free to reinitiate penalty proceedings u/s.271(1)(c) of the Act, in fresh assessment, in case, the AO comes to a conclusion or he is satisfied that this is a fit case for levy of penalty for concealment of income in term of section 271(1)(c) of the Act.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court at the time of hearing on 6th June, 2024 at Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 6th June, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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