

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.446/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-18)

Arumuga Nadar Soundararajan,
Rep by L/H. Sri Sudharsan,
No.16, Lakeview Road Extn,
West Mambalam,
Chennai 600 033.

Vs. The Income Tax Officer,
Non Corporate Ward 19(4)
Chennai

[PAN: AALPS 5134J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri. Anand Babunath, CA
: Shri. R. Mukundan, IRS, JCIT

सुनवाई की तारीख/Date of Hearing

: 13.06.2024

घोषणा की तारीख /Date of Pronouncement

: 19.06.2024

आदेश / ORDER

PER MANU KUMAR GIRI (Judicial Member)

The instant appeal filed by the L/H of the assessee is directed against the order 01.12.2023 passed by the NATIONAL FACELESS APPEAL CENTRE (NFAC), Delhi, arising out of the assessment order dated 19.12.2019 passed u/s section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') by the ITO for Assessment Year ('AY' in short) 2017-18.

2. The appellant has taken five grounds of appeal which are as under:

“A. For that the order of the Commissioner of Income-tax (Appeals) [CIT-A] is erroneous and was passed ignoring the facts and merits of the case disregarding the evidences submitted by the Appellant in the Compliance Portal of the Income- tax Department.

B. For that the Ld. CIT(A) erred in dismissing the appeal despite the fact that the Appellant had already offered an additional income in the Trading Account of the Business which are liable for taxation as income from business since there was no other source of income adduced by the Ld. AO as well CIT(A) in their proceedings.

C. For that the Ld. CIT(A) and Ld. AO both have brushed aside explanation offered where the sources of the Cash deposits were adequately covered in the disclosure made against the SFT before the Ld. AO was from the Business Activity of the Appellant in the nature of Manufacturing of Jewel Boxes as per the order of various customers.

D. For that the Ld. AO failed to note that the Income assessed was in the nature of Business income, Income from House Property, etc., and the same has been accepted in the intimation u/s. 143(1) of the IT Act, 1961 dated 19.11.2017.

E For that the Ld. AO also failed to note that the details called for in the Notice u/s. 142(1) of the IT Act, 1961 in the course of assessment proceedings, were duly submitted with the evidences since the case of the Appellant is covered under Tax Audit u/s. 44AB of the IT Act, 1961. The Ld. AO had estimated the unexplained investment at Rs. 35,00,000/- which have been disclosed as income in the Profit & Loss Account and does not warrant a separate addition under section 69 r.w.s section 115BBE of the IT Act, 1961 for taxing at special rates.

F. For that the Appellant further objects that the cash received from debtors and deposited into the bank account is covered under the Notification No: S.O. 3407 (E) dated 08.11.2016 under clause 2(iii) of the said Notification.

G. For that the Appellant objects to the invoking of section 115BBE of the IT Act, 1961 as the source of cash is within the identifiable sources and hence, the same cannot be brought under Chapter VI of the IT. Act, 1961

H. For that the Appellant objects to the levy of interest u/s. 234 A and 234 B of the IT Act, 1961.

I. For these grounds and for any other grounds that may be adduced by the Appellant craved for a leave to add or modify the same at any time during the course of proceedings under this Appeal’.

3. The assessee an individual filed original return of income for AY 2017-18 on 06.11.2017 declaring total income of Rs.13,69,560/-. The assessee premise was surveyed u/s 133A on 06.02.2018. The case has been selected for scrutiny by CASS. As per information available on record, the appellant had made cash deposits during demonetisation in Canara Bank and ICICI Bank totalling Rs.64,53,000/-. The AO in

its assessment order dated 19.12.2019 made an addition on account of unexplained investment of Rs.35,00,000/- u/s 69 r.w.s.115BBE of the Act. Ld.CIT(A) has dismissed the appeal and upheld the order of AO. Hence, assessee is further in appeal before us.

4. At the outset, Id.AR referred para 6.1 of the impugned order and submitted that Id.CIT(A) has passed the impugned order without waiting for the remand report of AO on the submissions dated 21.08.2023 and 05.09.2023. Ld.DR did not dispute the submissions of Id.AR.

5. We have heard the rival submissions, perused the record, impugned order. We find that during the course of hearing before Id.CIT(A), assessee filed his detailed submissions on 21.08.2023 and 05.09.2023 whereupon a letter was written by the Id.CIT(A) to Pr.CIT Chennai-3 on 20.09.2023 but no response was received which lead to passing of impugned order. Para 6.1 of the impugned order of Id.CIT(A) is as under:

‘6.1 The appellant vide his various grounds of appeal 1 to 11 has assailed the AO for making an addition of Rs. 35,00,000 u/ 69 r.w.s 115BBE of the Income Tax Act. As all the grounds of appeal are interconnected so are not being adjudicated separately for the sake of convenience and to avoid repetition. During the appellate proceedings the comments of the AO were sought on the submissions made by the appellant vide this office letters dated 21.08.2023 & 05.09.2023. A letter in this regard was also written to Pr.CIT Chennai-3 on 20.09.2023 but no response was received. In view of the same the appeal is being decided on the basis of the material on record and the submissions made by the appellant’.

6. After going through the para 6.1 of the impugned order of Id.CIT(A) referred supra, we are of considered view that Id.CIT(A) should have waited for the remand report, if not, then adverse inference should have been taken against the revenue.

7. Consequently, in the facts and circumstances of the case, we deem it fit to set aside the appeal to the file of Id.CIT(A) to seek remand report from the concerned Pr.CIT Chennai-3. We, also direct the Id.CIT(A) to supply the copy of remand report after getting from Pr.CIT Chennai-3 and grant proper opportunity to the assessee to submit comment thereon. Thereafter, Id.CIT(A) will decide the appeal afresh considering remand report, comment and after affording adequate opportunity of hearing to the assessee.

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

Order pronounced in the open court on 19th day of June, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai:

दिनांक Dated : 19 -06-2024

KV

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. गार्डफाईल/GF

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER