

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **863/CHNY/2024**

निर्धारण वर्ष/Assessment Year: 2013-14

**Shri Krishnasamy
Maruthupandian,**
D No.2/6/1531 Asari Colony,
4th Street, Satchiyapuram,
Sivakasi, Virudhunagar – 626 124.

The Income Tax Officer,
Vs. Corporate Ward-4,
Madurai.

PAN: AGZPM 0804B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri G. Akash, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing

: 24.06.2024

घोषणा की तारीख/Date of Pronouncement

: 24.06.2024

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/250/2023-24/1058168632 (1) dated 23.11.2023. The assessment was framed by the Addl./Joint/Deputy/Asst. Commissioner of Income Tax/Income Tax Officer, National Faceless Assessment Centre, Delhi

for the assessment year 2013-14 u/s.147 r.w.s.144B of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 19.03.2022.

2. The only issue in this appeal of assessee is against the order of CIT(A)-NFAC confirming the action of AO in adding the credits in the bank account amounting to Rs.7,72,83,031/- as unexplained money u/s.69A of the Act by holding that the assessee's appeal is dismissed as un-admitted and infructuous for the reason that the assessee has not paid an amount equal to the amount of advance tax in term of section 249(4)(b) of the Act.

3. Briefly stated facts are that the assessee has not filed his return of income and accordingly, notice u/s.148 r.w.s. 147 of the Act was issued and assessment was framed ex-parte u/s.147 r.w.s. 144B of the Act of the Act by the AO vide order dated 19.03.2022 by adding the credits deposited in the assessee's bank account amounting to Rs.7,72,83,031/-. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) dismissed the appeal as unadmitted by giving the reason that the assessee has not paid an amount equal to the amount of advance tax which was payable by him in term of section 249(4)(b) of the Act. The CIT(A)-NFAC observed as under:-

“4. 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, present appeal is not liable to be admitted. The appeal is infructuous and is, therefore, dismissed.”

Aggrieved, now assessee is in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee before CIT(A) contended that the assessee's total income for the impugned assessment year 2013-14 was less than the exemption limit of Rs.2,00,000/- and there is no liability for payment of advance tax. We noted that this fact is not considered by CIT(A)-NFAC and even, the CIT(A)-NFAC has to give a finding in term of proviso to section 249(4)(b) of the Act, wherein the assessee can adduce good and sufficient reason for not paying advance tax. The relevant proviso to section 249(4)(b) reads as under:-

(4) No appeal under this Chapter shall be admitted unless at the time of filing of the appeal,—

(a) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or

(b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him:

Provided that, in a case falling under clause (b) and on an application made by the appellant in this behalf, the Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause.

In view of the above provision and argument of the assessee before us that the assessee's total income for the relevant assessment year

2013-14 was less than Rs.2,00,000/- and there was no liability of payment of advance tax, the CIT(A)-NFAC has to examine the above provision in totality, which he failed to do. Hence, we set aside the order of CIT(A)-NFAC and remand the matter back to his file for fresh adjudication after considering the provisions of section 249(4)(b) of the Act as mentioned above. In term of the above, matter restored back to the file of CIT(A) and allowed for statistical purposes.

6. 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 24th June, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 24th June, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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