

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.: **870/CHNY/2024**

निर्धारण वर्ष/Assessment Year: 2017-18

Shri Ponnusamy Srinivasan,

No.51/19, Venugopalasamy Street,
Hosur – 635 109.

The Income Tax Officer,

Vs. Ward 1(1),
Hosur.

PAN: GCYPS 1607B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri T.S. Subramaniam, FCA

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 24.06.2024

घोषणा की तारीख/Date of Pronouncement

: 24.06.2024

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/250/2023-24/1060347000 (1) dated 30.01.2024. The assessment was framed by the Income Tax Officer, Ward 1, Hosur for the assessment year 2017-18 u/s.144 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 29.12.2019.

2. At the outset, the Id.AR for the assessee stated that the order of CIT(A) is ex-parte and there is no adjudication by CIT(A)-NFAC on merits of the case. It was stated by Id.AR that even on jurisdictional ground on new issue of 143(2) of the Act, the CIT(A)-NFAC has not properly adjudicated the issue. On merits, the issue is addition made by the AO of unexplained cash deposit added u/s.69A of the Act and taxed u/s.115BBE of the Act amounting to Rs.31,13,500/- and assessing 'income from other sources' at Rs.22,97,140/-. The Id.AR stated that the CIT(A)-NFAC has given his adjudication as under:-

6. Ground no. 6: This ground pertains to legality of assessment u/s 144 without issuance of notice u/s 143(2).

6.1 In para 8 of the assessment order, the assessing officer has concluded that the return of income filed on 17/12/19 is invalid and non-est. Once the return is treated as invalid and non-est, requirement of issuance of notice u/s 143(2) does not arise. This ground is dismissed.

7. Ground no.7: This ground is general in nature, therefore, doesn't require separate adjudication. Hence dismissed.

8. Further, it has been observed that the appellant has been provided reasonable number of opportunities but appellant has chosen not to avail any of these. It appears that the appellant is not keen to pursue the appeal as no material/argument has been brought on record by the appellant against the order of the AO and in support of the grounds taken in appeal.

9. Reference is made to the decision of Hon'ble Supreme Court in the case of CIT Vs. BN Bhattacharya (1997) 118 ITR 461 (SC), in which the Hon'ble Apex Court while dealing with the issue of persuasion of appeal has stated that-

"Preferring an appeal means more than formally filing it but effectively pursuing it."

10. In view of these facts. I am of the opinion that no interference is called for in the AO's order and therefore, the grounds of appeal are dismissed.

3. When these facts were confronted to Id. Senior DR, he could not controvert the above facts. We have gone through the order of CIT(A)-NFAC and also noticed that the CIT(A)-NFAC has allowed three opportunities fixing the case on 29.01.2024 after having issued two notices throughout the appellate proceedings. It seems that there is no finding that the notices were served on the assessee or not, although the notices were sent through ITBA whether these were served on assessee or not, it is not clear. Hence, in the interest of justice, we set aside the order of CIT(A)-NFAC and remand the matter back to his file for fresh adjudication on merits.

4. 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, Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.