

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.: 526/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2017-18

Shri Dhandapani Rajasekar,
No.54-F, Cherry Road,
Hasthampatty,
Salem – 636 007.

The Deputy Commissioner
of Income Tax,
Circle-1(1),
Salem.

PAN: ABTPR 5728C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri T.S. Lakshmi Venkataraman, CA
प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 01.07.2024
घोषणा की तारीख/Date of Pronouncement : 01.07.2024

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/250/2023-24/1059623963 (1) dated 11.01.2024. The assessment was framed by the Deputy Commissioner of Income Tax, Circle 1(1), Salem for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 20.12.2019.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A)-NFAC setting aside the appeal of assessee to the file of AO to re-decide. The Id.AR for the assessee drew our attention to paras 8.2 & 8.3 of the order of the CIT(A)-NFAC, which is as under:-

“8.2 As the AO has not given a clear finding, I am unable to decide the appellant’s grounds merely on the basis of appellant’s submissions. Therefore, the AO is directed to examine appellant’s claim that he has deposited demonetised currency only to the tune of Rs.30,34,000/- from 09.11.2016 to 31.12.2016, In that case, the balance amount of deposit of old currency old notes should be between 01.11.2016 to 08.11.2016. If the claim of the appellant is correct, the addition made by the AO shall be deleted

8.3 But if the claim of the appellant is not correct and the appellant has deposited Rs.88,30,000/- in demonetised notes during the period ,11.2016 to 31.12.2016, the addition made by the AO of Rs,54,23,000/- shall be sustained as the appellant was not expected to accept the old currency notes from his customers after the demonetization was announced. The acceptance of demonetised notes after the demonetisation was announced was prohibited by law. The AO is directed either to delete or sustain the addition on the basis of the verification to be carried as directed, Ground no.2 to 7 are treated to have been partly allowed.”

He drew our attention to Ground Nos.4 to 6, which reads as under:-

4. On the facts and circumstances of the case, The First Appellate authority is not justified in giving a direction to the A.O in para 8.3 of the assessment order and in para 10 treating the appeal as partly allowed for statistical purposes which tantamount to setting aside the assessment order for which the first appellate authority is not having powers from 01/06/2001.

5. On the facts and circumstances of the case, The First Appellate authority for a proper disposal of the appeal should have called for a remand report from the A.O instead of giving directions to the A.O.

6. In view of the above grounds and other submissions to be made at the time of Appeal hearing, the order U/S 250 passed by Commissioner of Income Tax (Appeals) NFAC may be cancelled and justice rendered.

3. When these facts were confronted to Id. Senior DR, he could not controvert.

4. After hearing rival submissions and going through the facts of the case, we noted that the CIT(A)-NFAC has simpliciter set aside the appeal of assessee to the file of the AO. In our view, there is no power to CIT(A) to set aside the order, he has to decide the issue and hence, we set aside the order of CIT(A)-NFAC and remand the matter back to his file for fresh adjudication with a direction to allow reasonable opportunity of being heard to the assessee and pass a speaking order.

5. 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 1st July, 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 1st July, 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.