

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER
आयकर अपील सं./ITA Nos.1537/Chny/2024
निर्धारण वर्ष /Assessment Years: 2017-18

Jayashri Prakash Kacholiya,
No.52/27 A K E Street 3,
Tiruchengode Post,
Tiruchengode Taluk,
Namakkal,
Tamil Nadu-637211
[PAN: AEMPJ0223N]

Income Tax Officer,
Ward-1,
Tiruchengode

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri T.S.Lakshmi Venkataraman, C.A

प्रत्यर्थी की ओर से /Respondent by

: Shri G.Suresh, JCIT

सुनवाई की तारीख/Date of Hearing

: 22.07.2024

घोषणा की तारीख /Date of Pronouncement

: 09.08.2024

आदेश / O R D E R

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2024-25/1064855808(1) dated 14.05.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2017-18. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 14.05.2024 passed by NFAC, Delhi.

2.0 At the outset, the Ld.AR of the assessee pointed out that the impugned order of the Ld.AO is an ex parte order without hearing the assessee. According to the Ld.AR, the assessee was prevented from sufficient cause for non-participating in the assessment proceedings. Therefore, he pleaded for one more opportunity before the Ld.AO. The assessee also argued that the Ld.CIT(A) was not justified in confirming addition of Rs.33,22,039 u/s 69A r.w 115BBE made by the AO. The assessee also argued that the order of the Ld.AO is void ab initio as the same has been passed u/s 144 without issue of notice u/s 143(2).

3.0 Per contra, the Ld.DR doesn't want us to give one more innings to the assessee.

4.0 We have heard both the parties and perused the material available on record. We note that the Ld.CIT(A) has passed an ex parte order qua assessee holding in para 5.3 of his order that details in support of cash deposits have not been filed before him or even the AO. According to the AO the assessee was issued notice u/s 142(1) on 09.03.2018 to file a return of income for AY-2017-18 on or before 31.03.2018. As per para-3 of AO's order, the assessee electronically filed the return on 16.05.2018 which was consequently treated as

invalid return. The assessee has argued that assessment has been completed u/s 144 which is permissible only when notice u/s 143(2) was issued and which remain un-complied. In this case, no such notice was issued and hence, the Assessment Order per se becomes bad in law. The arguments of the assessee are untenable on this issue. Section 142(1) of the Act authorizes an assessing officer to issue notice to an assessee asking to file a return of income within a specified time. The assessee does not have any right to delay the filing of return therein. The action of Ld.AO qua treatment of assessee's return of income, therefore is confirmed. It is the duty of the assessee to file the return in such time as specified in the notice. Section 144(1)(b) prescribes invocation of ex-parte assessment proceedings u/s 144 in cases where an assessee does not file the return of income u/s 142(1). Before us the assessee has also indicated availability of details alluding towards genuineness of cash deposits. The Ld.CIT(A) has not delved into this aspect of the matter. Be that as it may, it should be borne in mind that if an assessee is aggrieved by the Assessment Order, he has statutory right of appeal before the First Appellate Authority and such a right would be futile, if the First Appellate Authority doesn't give proper opportunity of hearing to the assessee. Therefore, for the ends of justice and fair play, we are inclined to give

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one more opportunity to the assessee, and therefore, set-aside the impugned orders of Ld CIT(A) and of the AO and restore the matter back to the file of the AO for assessment de novo. The assessee is directed to file all necessary written submissions/relevant documents to substantiate its case qua cash deposits in its bank accounts of Rs.33,22,039/- made u/s 69A during the demonetization period and the Ld.AO to pass a speaking AO order in accordance with law after hearing the assessee.

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

Order pronounced on 9th August, 2024 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / **Judicial Member**

चेन्नई/Chennai, दिनांक/Dated: 9th August, 2024.

KB/-

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य / **Accountant Member**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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