

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:1799/CHNY/2024

निर्धारण वर्ष/Assessment Year:2011-12

Shri D. Suresh,
No.127B, Samiyanthoppu,
Salem Road,
Namakkal – 637 001.

The Income Tax Officer,
Vs. Ward-1,
Namakkal.

PAN: CGQPS 2880E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri T.S. Lakshmi Venkatraman, F.C.A

प्रत्यर्थी की ओर से/Respondent by

: Shri R.Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 21.08.2024

घोषणा की तारीख/Date of Pronouncement

: 21.08.2024

आदेश /O R D E R

PER BENCH:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi in Order No.ITBA/NFAC/S/250/2024-25/ 1065440074 (1) dated 06.06.2024. The assessment was framed by the Income Tax Officer, Ward-1, Namakkal for the assessment year 2011-12 u/s.144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 29.11.2019.

2. At the outset, the Id.AR for the assessee stated that first of all the CIT(A)-NFAC has not adjudicated the issue of re-opening raised by way of ground No.2 and consequent assessment framed u/s.144 r.w.s 147 of the Act and also not allowed proper opportunity of being heard to the assessee while confirming the addition made by AO of cash deposit in IDBI bank account of Rs.25,61,200/- and moreover the CIT(A)-NFAC order is dismissed for default and there is no adjudication on merits. The Id.AR for the assessee first of all took us through the order of CIT(A)-NFAC and also his decision in para 6 and particularly, he took us to para 6.9, which reads as under:-

“6.9 Before parting, it is trite that an appellate authority is essentially called upon to balance the two sides of an argument presented before him as held in Nirmal Singh and Others of the Hon’ble Punjab and Haryana High Court [Cr No.3791 of 2013 (O&M) dated 01.05.2014] and in the absence of any reasonable, cogent and valid arguments/contentions advanced by the appellant in the instant appeal to counter the AO’s decision as contained in the assessment order, as mentioned earlier, the additions/disallowances made by the AO is sustained in terms of the observations herein-above.”

The Id.AR also stated that the assessment framed by AO is ex-parte u/s.144 r.w.s. 147 of the Act and best judgment assessment framed without providing opportunity of being heard to the assessee.

3. When these facts were confronted to Id.CIT-DR, he took us through the assessment order and stated that the AO has allowed

several opportunities by issuing notices as mentioned in para 4 of the assessment order but no one represented and moreover, the Id.CIT-DR stated that the assessee is a non-filer. But, he could not controvert the fact that the appellate order i.e., the order of CIT(A)-NFAC is ex-parte and dismissed for default and not on merits.

4. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the order of CIT(A)-NFAC is dismissal for default and not decided on merits. We also noted that the assessment order is best judgment assessment u/s.144 of the Act and the AO has allowed several opportunities but the assessee is totally non-cooperative and careless. In the interest of justice and fair play, since the order of CIT(A)-NFAC is not on merits and the order of AO is also best judgment assessment, we set aside the order of CIT(A)-NFAC as well as that of the AO and remand the matter in entirety back to the file of the AO for fresh adjudication after allowing reasonable opportunity of being heard to the assessee. The assessee is also directed to cooperate with the AO and file all the necessary details as required as per law. However, this set aside is subject to a cost of Rs. 10,000/- (Rupees ten thousand only) to be paid to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras by the assessee within a month's time from

the date of receipt of this order. The assessee will pay this cost and produce the receipt before the AO. In term of the above, the matter is remanded back to the file of AO for fresh adjudication after allowing reasonable opportunity of being heard to the assessee. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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 21stAugust, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 21stAugust, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त /CIT, Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT