

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.:1785/CHNY/2024

निर्धारण वर्ष/Assessment Year:2017-18

Smt. Amutha Sermaraj,
J-1, Maxsis Presidium,
No.2, 24th Street,
L Block, Anna Nagar East,
Chennai – 600 102.

The Income Tax Officer,
Vs. Non-Corporate Ward-10(6),
Chennai.

PAN: AEIPA 0278C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri V. Balaji, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri 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/250/2024-25/1064328960(1) dated 24.04.2024. The assessment was framed by the Income Tax Officer, Non-Corporate Ward 10(6), Chennai for the

assessment year 2017-18 u/s.144 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 12.12.2019.

2. At the outset, the Id.AR for the assessee drew our attention to the following grounds 3 & 4:-

3. *The Ld.CIT(A), NFAC has erred in dismissing the appeal without giving final opportunity of being heard on merits.*

4. *The Ld.CIT(A), NFAC ought to have decided the appeal on merits and not dismissed the appeal for non-appearance.*

2.1 The Id.AR then took us through the order of CIT(A)-NFAC and his findings recorded in paras 6, 6.1 & 6.2 and read out all the paras and stated that there is no iota of order on merits. He stated that the CIT(A)-NFAC dismissed the appeal for default in simpliciter and has not decided on merits. Hence, he requested for setting aside of this order of CIT(A)-NFAC and remand the matter back to his file for fresh adjudication. When these facts were confronted to Id.CIT-DR, he stated that this appeal was fixed on multiple times and he referred to para 5 of the CIT(A)-NFAC, which reads as under:-

“5. Notices u/s.250 of the Act were issued to the appellant on 27.12.2020, 07.11.2023, 29.01.2024, 01.03.2024 and 08.04.2024 providing multiple opportunities for furnishing of submissions (online) 29.01.2021, 15.11.2023, 05.02.2024, 07.03.2024 and 15.04.2024 respectively in support of each of the Grounds of appeal filed by the appellant. All the hearing notices were sent on the e-mail address provided for communication, in item 17 of Form 35.”

But, when it was confronted that where is the decision on merits, he could not answer.

3. After hearing rival contentions and going through the facts of the case, we noted that the CIT(A)-NFAC has simpliciter dismissed the appeal for default by observing in para 6.2 as under:-

“6.2 The matter has been considered. The assessment order u/s.144 of the Act as well as Form 35 along with statement of facts and grounds of appeal has been carefully examined. Vide the hearing notices the appellant was asked to furnish submissions in support of the grounds of appeal filed by him. However, despite the requests, the same have not been filed by the appellant till date despite 5 notices over a span of thirty nine months. In view of the same, there is no reason available on record for any change in the assessment order of the AO as even during the assessment proceedings no response was furnished by the appellant before the AO to any of the notices served to the appellant. In view of all of the above the order u/s 144 of the AO is confirmed. Accordingly, all the grounds of appeal are dismissed.”

We noted that the CIT(A)-NFAC has simpliciter dismissed the appeal for default and not adjudicated or decided merits of the case. After going through the provisions of the Act particularly provision of section 250 of the Act, we are of the view that unless the statute authorizes the quasi judicial authority to dismiss the appeal for default expressly or by inevitable implication but the appellate authority has to decide the appeal on merits and not dismiss it for default. For this, we rely on the decision of Hon'ble High Court of Madras in the case of Southern Steel Industries vs. AAC (CT),

reported in [1996] 101 STC 273 (Mad). In term of the above, the order of CIT(A)-NFAC is set aside and matter remanded back to his file for fresh adjudication on merits after allowing reasonable opportunity of being heard to the assessee.

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

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT